

Development Management Sub-Committee Report

Wednesday 16 March 2022

**Application for Planning Permission
13 Ashville Terrace, Edinburgh, EH6 8DD**

Proposal: To form hard standing in the front garden to create a driveway with entrance gates (in part retrospect).

**Item – Committee Decision
Application Number – 21/02915/FUL
Ward – B13 - Leith**

Reasons for Referral to Committee

This application has been referred to the Development Management Sub-Committee because 57 letters of representation in support of the proposals have been received, and the recommendation is to refuse and enforce. Consequently, under the Council's Scheme of Delegation, the application must be determined by the Development Management Sub-Committee.

Recommendation

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

Summary

The proposals fail to preserve or enhance the character or appearance of the conservation area and property itself and therefore in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 there is strong presumption against granting planning permission for the development. The Courts have clarified that the presumption can only be rebutted if the proposals would result in significant public interest advantages which can only be delivered at the scheme's proposed location. Having had due regard to the public sector equality duty and other material considerations it is not considered that the proposals give rise to any significant public interest advantages that outweigh the statutory presumption against granting planning permission.

The application does not comply with the Edinburgh Local Development Plan, Edinburgh Colonies Conservation Area Character Appraisal, non-statutory guidance for Listed Building and Conservation Areas or non-statutory Guidance for Householders.

The proposals are not in keeping with the character and appearance of the conservation area and have an 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 two storey, mid-terrace, Colony style upper flat in a residential area. The property is located within an established residential area of terraced colony style properties. These properties consist of upper and lower flats with front doors on opposite sides of the building, allowing each flat to have a front garden. As a result, the lower flat's rear windows overlook the upper flat's garden.

The properties have well defined boundaries along the streets formed by a combination of dwarf walls, railings, hedges and other boundary treatments, resulting in an enclosed street structure of cul-de-sacs with restricted permeability.

There are no other run-ins/driveways within the Lochend Conservation Area, except for two examples at the end of Beechwood Terrace and Thornville Terrace; both are located in larger gardens and face the end of the terraces.

Notwithstanding the above, private vehicular parking spaces are not characteristic of the conservation area and there are no examples of driveways for the mid-terraced properties.

Description of the Proposal

This application is for the formation of new hard standing, including the removal of the existing boundary wall and railings, and the installation of new entrance gates. The proposal is in part retrospect. The boundary wall and railings have already been removed and the flagstones have been placed within the area. which is already in use as a parking space.

Relevant Site History

21/02904/CON
Substantial Demolition in a Conservation Area

01/04469/FUL
Form parking area in garden
Refused
21 January 2002

02/02780/FUL
Formation of hard standing/drive
Refused
18 February 2003

19/06040/FUL

Removal of the existing concrete base and replacing it with pavers and landscape. Additionally, we would like to drop the kerb in front of the property.

Not Development

13 February 2020

Other Relevant Site History

30 March 2021 - enforcement investigation regarding commencement of alleged unauthorised alterations/works on site including demolition of the existing boundary wall (application reference 21/00174/EOPDEV).

Pre-Application process

There is no pre-application process history.

Consultation Engagement

Transportation Planning

Refer to Appendix 1 for a summary of the consultation response.

Publicity and Public Engagement

Date of Neighbour Notification: 23 July 2021

Renotification: Not Applicable

Date of Press Publication: 30 July 2021

Date of Site Notice: 27 July 2021

Number of Contributors: 101

Section B - Assessment

Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations and
- any other identified material considerations.

Assessment

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

a) The proposals harm the character or appearance of the conservation area?

The Edinburgh Colonies Conservation Area Character Appraisal (ECCACA) emphasises the historic importance and unique architectural form of the Colony developments in Edinburgh. The appraisal states that:

The Colonies were built as double flats with front doors on opposite sides of the building, allowing each flat to have a front garden. Characteristically, each flat originally had four rooms, a separate external toilet and a garden...The form of the colony developments, with their intimate setting and pedestrian emphasis contributes a sense of identity and community that is unique in Edinburgh.

The ECCACA specifically describes the Lochend (Restalrig Park) Colonies as having: 'well defined boundaries on all sides formed by the walls and hedges of adjoining housing. This results in an enclosed street structure of cul-de-sacs with restricted permeability which, along with the relatively small scale of the buildings and gardens, and the limited vehicular access provides a secluded and intimate sense of place with no external views.'

Within this conservation area, the arrangement of the double flatted properties with its front garden and boundary wall is a key characteristic of the area. It is important that this relationship is maintained.

For this property, in line with the majority of the conservation area, the existing stone boundary wall delineates the front boundary of the proposal site. It forms part of the property's frontage and is an intrinsic part of its appearance.

The proposal has removed the existing boundary wall and railings to create a private vehicle access. This is disruptive to the setting of the original property by virtue of eroding a feature that contributes positively to the character and setting of the property; and allowing the introduction of a vehicle into the garden space.

Within the Lochend (Restalrig Park) Colonies, there have been 3 planning applications for the formation of a parking area/hard standing within the last 30 years. Both 01/04469/FUL and 02/02780/FUL were refused. The third and most recent application (19/06040/FUL) related to an end-terrace with a garden facing down the street. This was determined to be not development as the opening already existed and there was previously a garage. Planning permission was therefore not required in that instance, and it is not a comparable situation to this application property.

Notwithstanding the above, private vehicular parking spaces are not characteristic of the conservation area. The removal of the front boundary wall detracts from the setting of the flatted property and leads to incremental erosion to the detriment of the character and appearance of the conservation area.

Conclusion in relation to the conservation area

In light of the above, the proposals fail to preserve or enhance the character or appearance of the conservation area and property itself and therefore in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 there is strong presumption against granting planning permission for the development.

b) The proposals comply with the development plan.

The Development Plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policy Env 6
- LDP Design policy Des 12

The non-statutory 'Listed Building and Conservation Area' guidance and 'Guidance for Householder' is a material consideration that is relevant when considering policies Env 6 and Des 12.

Scale, form, design and neighbourhood character

Given the site is located within the Lochend Conservation Area Section 64 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 applies. It states:

"Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

LDP Policy Env 6 (Conservation Area - Development) states:

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:

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.

Non-statutory Guidance for Householders states:

'Parking in front gardens will not normally be allowed...in conservation areas or listed buildings, where loss of original walls or railings and the creation of a hard surface would have an adverse effect on the character and setting of the area, or a listed building and its special architectural or historic interest.'

Non-statutory Guidance for Listed Buildings and Conservation Areas states:

'When considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals. The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.'

The proposals are not of an acceptable scale, form and design and are not compatible with the existing dwelling. They fail to preserve the character and appearance of the conservation area as detailed in section a) of the assessment.

Neighbouring Amenity

LDP policy Des 12 (Alterations and Extensions) states:

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.

Non-statutory Guidance for Householders states:

'Parking in front gardens will not normally be allowed...where the parking space would be formed in front of the windows of a habitable room owned by a different occupier.'

Due to the layout of the properties within the Lochend (Restalrig Park) Colonies, the driveway has been constructed almost immediately outside the rear windows of the ground floor flat, owned by a different occupier (the applicant lives in the upper flat).

Though private views will not be protected (i.e., those from neighbours across the street), the immediate outlook from within a building may be protected. This means that new development that blocks out the immediate outlook of a dwelling should be avoided.

The proposal results in the parking of the applicant's car almost directly in front of the ground floor flat's rear windows. As such, the immediate outlook will be impacted by the parking of the applicant's car, as views out will be blocked.

Furthermore, parking a vehicle right outside the windows of a different occupier could result in unreasonable impacts on the neighbours' amenity through increased levels of noise and light pollution. This could be particularly disruptive at night where head/taillights of the vehicle may shine directly into the rear windows of the ground floor property and noise from the vehicle parking, in close proximity to the lower flat, may disrupt/wake the sleep of the occupants of the ground floor property.

In addition, the downstairs neighbour's daylight and sunlight may be impacted by the applicant's car, preventing light from entering these windows.

As such, the proposals have been assessed against requirements set out in the non-statutory Guidance for Householders and the Local Development Plan and it is determined that the proposals will result in an unreasonable loss to neighbouring amenity with respect to privacy, loss of daylight or sunlight and outlook. The proposals do not comply with LDP Policy Des 12 or the non-statutory Guidance for Householders.

Conclusion in relation to the Development Plan

The proposals are not of an acceptable scale, form and design, are not compatible with the existing dwelling and fail to preserve or enhance the special character and appearance of the conservation area.

As such, the proposals are contrary to the Local Development Plan (LDP) Policy Env 6, Policy Des 12, Edinburgh Colonies Conservation Area Character Appraisal, the non-statutory Guidance for Householders and the non-statutory Guidance for Listed Buildings and Conservation Areas.

c) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

It is considered that the proposal fails to comply with Paragraph 29 of SPP as the application does not comply with the guiding principles of supporting good design or protecting, enhancing and promoting access to cultural heritage, including the historic environment.

The development fails to protect the existing character and appearance of the conservation area as detailed in section a) of the assessment.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

Road safety

Transport Planning has been consulted and has no objections to the proposals.

Equalities and human rights

The Human Rights Act 1998, Protocol 1, Article 1 states a person has the right to the peaceful enjoyment of all their possessions including home and other land. In addition, Article 8 of the Human Rights Act stating a person has the substantive right to respect their private and family life.

Further, the Local Planning Authority has a legal obligation to have due regard to persons with protected characteristics under Section 149 - Public Sector Equality Duty of the Equality Act 2010. Disability is one of the protected characteristics.

Under Section 149 - Public Sector Equality Duty of the Equality Act 2010, the public authority must have due regard to the need to advance equality of opportunity between persons who share a protected characteristic and persons who do not. The Council in determining planning applications under Section 25 of the Town and Country Planning (Scotland) Act 1997, must consider whether any material consideration outweighs compliance with Edinburgh Local Development Plan policies.

Evidence has been submitted along with the application to show that the proposals are needed in order to adapt the dwelling and make it more suitable for living with a disability. In this instance, the right to health, standard of living and individual family and social life are impacted on. The proposal would allow the applicant easier access to their property via a shorter walking distance to the door from their vehicle.

The proposals shall also impact the right to health, standard of living and individual family and social life of the downstairs flat. The proposed driveway means that the applicant's car shall be parked less than a metre in front of the lower flat's rear windows. In addition to impact on planning considerations, in the form of neighbouring amenity (i.e., impacts on privacy, sunlight/daylight, immediate outlook and increased light and noise pollution), the proposal will also result in non-planning considerations, such as potential health impacts (from vehicle fumes if reversed into the space) for the neighbouring property.

Furthermore, there is scope for the applicant to apply for a designated disabled persons on-street parking space.

As such, based on the above, departure from the non-statutory guidance and LDP is not outweighed by these considerations.

Public representations

The scheme has received a total of 99 representations: 42 objecting and 57 supporting the application. In certain cases, multiple representations were submitted by individuals and some commenters did not provide accurate names or addresses. There were a number of non-material comments which cannot be taken into consideration in the assessment of the application.

Material considerations - Objecting

- Not in-keeping with Lochend Conservation Area - addressed in section (a) - The proposals harm the character or appearance of the conservation area;
- Not in-keeping with relevant guidance, including the Lochend Conservation Area Character Appraisal, non-statutory Guidance for Listed Buildings and Conservation Areas and Edinburgh Local Development Plan - addressed in section (a) - The proposals harm the character or appearance of the conservation area and section (b) - The proposals comply with the development plan;
- Proposal results in the loss of additional on street parking and is not safe as leaving the parking space results in a large turning circle and mounting of the opposite curb - addressed in section (c) - Road safety.
- Loss of historic boundary wall and materially effects the external appearance of the building and is visually unattractive - addressed in section (a) - The proposals harm the character or appearance of the conservation area and section (b) - The proposals comply with the development plan;
- Detrimental impact on privacy, noise, health, safety, daylight and sunlight and outlook to the downstairs flat, including headlights and fumes directly into downstairs flat's windows - addressed in both section (b) - The proposals comply with the development plan and section (c) - Equalities and human rights;
- To address disability concerns a dedicated disability parking space can be applied for on the road directly outside the property - addressed in section (c) - Equalities and human rights.

Material considerations - Support

- In keeping with the spirit of the area - addressed in section (a) - The proposals harm the character or appearance of the conservation area and section (b) - The proposals comply with the development plan;
- Lovely garden space which provides availability for parking to save road space - addressed in section (a) - The proposals harm the character or appearance of the conservation area and section (b) - The proposals comply with the development plan;

- Solution to parking problems in conservation areas and stops triple parking which is unsightly - addressed in section (a) - The proposals harm the character or appearance of the conservation area and addressed in section (c) - Road safety;
- Looks nice when the car is not parked there and causes no harm to anyone - addressed in section (a) - The proposals harm the character or appearance of the conservation area Section (b) - The proposals comply with the development plan and section (c) - Road safety;
- Less cars on the road (safer, better visibility, etc.) - addressed in section (c) - Road safety;
- Required for disability ease of access and quality of life - addressed in section (c) - Equalities and human rights.

Non-material considerations - Objections

- Impact view from across the road - Private views are not protected and therefore cannot be assessed as part of the planning process.
- Concerns that works have been undertaken prior to planning approval - Applicant was informed that any works completed prior to planning approval are completed at the applicant's own risk.
- Comments on how the space is currently being used, including that the entrance to the driveway is blocked by the applicant's second car - Not relevant to the Planning process.
- Negative impact on the Community's spirit - Not relevant to the Planning process.
- Could set a trend/precedent for similar development - Not relevant to the Planning process, each application is assessed individually.
- Could impact the value of surrounding properties - Not relevant to the Planning process.
- Applicant put up 'No Parking' signs during development which they had no right to do - Not relevant to the Planning process.
- Considerations regarding Electric Vehicles and Electric Vehicle charging points - Not relevant to the Planning process for this application.
- Curb has already been dropped - Not relevant to the Planning process. This would be addressed by the Road Permits team.
- Concerns that some of the neighbouring property's wall will also be removed - Only the works shown in the plans are assessed as part of this application.

Non-material considerations - Support

- More on street parking (i.e. for emergency vehicles) and helpful if permits are introduced - Not relevant to the Planning process.
- Provides security for the applicant's car - Not relevant to the Planning process.
- Beneficial for the applicant as they work very changeable hours children and shopping etc. and a permanent space would help - Not relevant to the Planning process.
- Accusations of racism - Not relevant to the Planning process.

Conclusion in relation to identified material considerations

The development would provide improved access to the upper floor flat, and with respect to the protected characteristic of disability, this would help to advance equality of opportunity. However, there would be harmful effects of the development upon the character and appearance of the conservation area and upon the neighbour's amenity. The benefit of the scheme in advancing equality of opportunity does not outweigh the impacts of the development or overcome the presumption against granting planning permission that results from the harm the development causes to the conservation area and the impact on the neighbour's amenity and quality of life. The development is not in accordance with the Edinburgh Local Development Plan. There are no other material considerations which outweigh this conclusion.

Overall conclusion

The proposals fail to preserve or enhance the character or appearance of the conservation area and property itself and therefore in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 there is strong presumption against granting planning permission for the development. The Courts have clarified that the presumption can only be rebutted if the proposals would result in significant public interest advantages which can only be delivered at the scheme's proposed location. Having had due regard to the public sector equality duty and other material considerations it is not considered that the proposals give rise to any significant public interest advantages that outweigh the statutory presumption against granting planning permission.

The application does not comply with the Edinburgh Local Development Plan, Edinburgh Colonies Conservation Area Character Appraisal, non-statutory guidance for Listed Building and Conservation Areas or non-statutory Guidance for Householders. The proposals are not in keeping with the character and appearance of the conservation area and have an adverse impact on neighbouring residential amenity. There are no material considerations which outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons: -

1. The proposal is contrary to the Local Development Plan Policy Des 12 in respect of Alterations and Extensions, as it is not compatible with the character of the existing building, will result in an unreasonable loss of privacy or natural light to neighbouring properties and will be detrimental to neighbourhood amenity and character.
2. The proposal is contrary to the Local Development Plan Policy Env 6 in respect of Conservation Areas - Development, as it will not preserve or enhance the character or appearance of the defined conservation area, nor is it consistent with the Edinburgh Colonies Conservation Area Character Appraisal (ECCACA).
3. The proposals are contrary to development plan policy on extensions and alterations as interpreted using the non-statutory Guidance for Householders as it would have an adverse effect on the character and setting of the area as well as the amenity and quality of life of the neighbouring property.
4. The proposals are contrary to non-statutory guidance on Listed Buildings and Conservation Areas as it fails to preserve or enhance the character or appearance of the area including the spatial and structural patterns of the historic fabric and the architectural features that make the area significant

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 22 July 2021

Drawing Numbers/Scheme

01-06

Scheme 1

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