

Ms Alison Campbell.
Flat 2
1 Magdalene Drive
Edinburgh
EH15 3DD

Decision date: 19 January 2022

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

To convert grassed area to garden / driveway / patio area, using porous monobloc pavers. Screened area to rear to use for seating and beds for planting down each side. At Flat 2 1 Magdalene Drive Edinburgh EH15 3DD

Application No: 21/05239/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 6 October 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 proposal is contrary to the Local Development Plan Policy Des 12 in respect of Alterations and Extensions, as it impacts on the character of the building and is detrimental to the neighbourhood character.
2. The proposals are contrary to development plan policy on extensions and alterations as interpreted using the non-statutory Guidance for Householders as the access width and scale of hardstanding impacts on the property and the neighbourhood amenity.

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

Drawings 01-06, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

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

The proposal is contrary to the Local Development Plan Policy Des 12 in respect of Alterations and Extensions and the non-statutory Guidance for Householders, as it is not compatible with the character of the existing property and will be detrimental to the neighbourhood amenity and character. There are no material considerations which outweigh this decision.

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.



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
Flat 2, 1 Magdalene Drive, Edinburgh**

Proposal: To convert grassed area to garden / driveway / patio area, using porous monobloc pavers. Screened area to rear to use for seating and beds for planting down each side.

**Item – Local Delegated Decision
Application Number – 21/05239/FUL
Ward – B17 - Portobello/Craigmillar**

Recommendation

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

Summary

The proposal is contrary to the Local Development Plan Policy Des 12 in respect of Alterations and Extensions and the non-statutory Guidance for Householders, as it is not compatible with the character of the existing property and will be detrimental to the neighbourhood amenity and character. There are no material considerations which outweigh this decision.

SECTION A – Application Background

Site Description

The application site is the front garden of a lower ground flat within four storey blocks of flats, located on Magdalene Drive.

Description Of The Proposal

It is a retrospective application for a driveway to the front of the garden and a patio area to the back of the garden. Areas of planting have been retained along the sides of the front garden.

Relevant Site History

No relevant site history.

Consultation Engagement

Publicity and Public Engagement

Date of Neighbour Notification: 19 January 2022

Date of Advertisement: Not Applicable

Date of Site Notice: Not Applicable

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.

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 neighbourhood character;
- b) the proposal will cause an unreasonable loss to neighbouring amenity;
- c) any impacts on equalities or human rights are acceptable;
- d) any comments raised have been addressed; and
- e) other material consideration.

a) Scale, form, design and neighbourhood character

The proposed hard-standing area would cover approximately 85% of the front garden area with hard standing which consists of porous materials. The non-statutory "Guidance for Householders" advises that parking spaces in front gardens should be a maximum of 21 square metres or 25% of the area, whichever is the greater. This parking space together with patio takes up 85% of the garden area and exceeds this criterion resulting in an overly dominant feature in this amenity space, detracting from its green character.

In addition, the front parking space should be no wider than 3 metres and the proposal is for 4.7 which considerably exceeds this requirement. In addition, there should be only one parking space per property and the application is for two spaces. Therefore, the proposal does not meet the standards set up by the non-statutory guidance.

In terms of the neighbourhood, the flatted properties of this type have large front gardens and these are generally green space. As a result, the grassed front gardens are part of the overall character of the area and contributes to visual amenity. The loss of the green space begins to undermine this characteristic and starts to impact on the amenity of the neighbourhood.

The proposal does not comply with Local Development Plan Policy Des 12 and the non-statutory Guidance for Householders.

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

The submitted documentation states that the retrospective proposal is for creation of a driveway for two cars combined with extended patio area to the front for the owner of Flat 2 1 Magdalene Drive who is registered disabled.

The application is retrospective, and the patio and driveway have already been constructed to the front of the flatted property.

The planning application raises matters of equality as the purpose of the driveway is to meet the identified needs of a disabled individual and this is a material planning consideration.

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. The Council in determining the planning applications under Section 25 of the Town and Country Planning (Scotland) Act 1997, must consider whether this material consideration outweighs any potential non-compliance with the Edinburgh Local Development Plan.

In terms of equalities there are merits to the scheme for the applicant. The design of the driveway with smooth level access would provide ease of use for users with mobility difficulties. The scale of the driveway has the potential to deliver a good standard of improving external standards of movement, appropriate for the use of this individual with 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.

In this case, the delivery of an accessible driveway and patio to the front to accommodate a person's disability has the potential to advance equality of opportunity between persons who share a protected characteristic and persons who don't.

In considering whether this material consideration outweighs any potential non-compliance with the Edinburgh Local Development Plan, a number of factors have to be considered. The works impact on the wider amenity of the neighbourhood by removing the green space.

Planning permission relates to the use of the land and it would not be appropriate to apply a personal consent to the future occupancy of a private flatted property as the driveway and patio area would then have to be removed when the applicant no longer lives there.

On balance, the non-compliance with the LDP and non-statutory guidance for householders is not outweighed by the benefits to an individual with a protected characteristic. As stated above, the proposal does not comply with the Guidance for Householders in terms of the extent of the hard standing, size of the access point and loss of green space. These substantial infringements would cause significant harm to the environment, the character of neighbourhood area and sustainability.

Because it is a retrospective application there was no opportunity to amend the proposals. There would be scope to reduce the hardstanding area and to leave one parking space but given the works are complete, this was not an option for the applicant.

d) Public comments

The application has attracted one comment in support.

e) Other Material Consideration

SPP Sustainable Development

Scottish Planning Policy presumption in favour of sustainable development is a significant material consideration due to the development plan being over 5 years old.

Emerging Policy Context

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

City Plan 2030 - While the proposed City Plan is 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.

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 impacts on the character of the building and is detrimental to the neighbourhood character.
2. The proposals are contrary to development plan policy on extensions and alterations as interpreted using the non-statutory Guidance for Householders as the access width and scale of hardstanding impacts on the property and the neighbourhood amenity.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 6 October 2021

Drawing Numbers/Scheme

01-06

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

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

Appendix 1

Consultations

NAME: Transportation Planning

COMMENT: No objection.