

Stuart Robinson.
15 Greenbank Drive
Edinburgh
EH10 5RE

Mr Hector Falconer.
49 Cluny Gardens
Edinburgh
EH10 6BL

Decision date: 22 June 2022

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

Alterations to the front garden landscaping. Increase area of pavers by removing section of grass. Increase driveway width and install new gates.
At 49 Cluny Gardens Edinburgh EH10 6BL

Application No: 22/02045/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 28 April 2022, 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:-

1. The proposal is contrary to the Local Development Plan as proposed gate will adversely impact on the setting of the villa properties which will fail to preserve the character or 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 01-03, 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 veronika.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
49 Cluny Gardens, Edinburgh, EH10 6BL**

Proposal: Alterations to the front garden landscaping. Increase area of pavers by removing section of grass. Increase driveway width and install new gates.

**Item – Local Delegated Decision
Application Number – 22/02045/FUL
Ward – B10 - Morningside**

Recommendation

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

Summary

The proposed works to the dwelling will not preserve or enhance the character and appearance of the conservation area and are in not accordance with the Development Plan. The works are not compatible with the existing dwelling and surrounding neighbourhood character but will not result in an unreasonable loss of neighbouring amenity. There are no material considerations which indicate that the proposal should be granted. Therefore, the proposal is not acceptable.

SECTION A – Application Background

Site Description

The site is a semi-detached traditional stone built villa dwelling set within an extensive feu situated on the north side of Cluny Gardens

The property lies within the Morningside Conservation Area.

Description Of The Proposal

The application proposes to replace front gate and re-landscape front garden to provide additional parking space.

Relevant Site History

04/03375/FUL
49 Cluny Gardens
Edinburgh
EH10 6BL
Form access stair to rear garden
Granted
9 November 2004

07/03840/FUL
49 Cluny Gardens
Edinburgh
EH10 6BL
Single storey garage extension to front and 2 storey rear extension and associated works
Granted
2 November 2007

Other Relevant Site History

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 22 June 2022

Date of Advertisement: 13 May 2022

Date of Site Notice: 13 May 2022

Number of Contributors: 1

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 Morningside Conservation Area Character Appraisal emphasises that the architectural character of the conservation area is largely composed of Victorian and Edwardian villas and terraces which form boundaries to extensive blocks of private open space. The villa streets are complemented by the profusion of mature trees, extensive garden settings, stone boundary walls and spacious roads. The villas which are in variety of architectural styles are unified by the use of local building materials.

The appraisal refers to use of consistent materials including stone boundary walls helping to unify the varied built forms. Further, that low stone walling to the front of buildings is an important feature of the area, particularly where enhanced by traditional railings and gates which add rhythm and character.

The low-stone boundary wall borders the front of the site and is a consistent feature along the frontage of these villa buildings. Its uniform position and materials along the street edge make a positive contribution to the setting of these traditional villa properties and character of the historic environment.

The proposal would introduce a larger non-traditional in design and materials gate to the driveway which would not be in keeping with the streetscape.

The paving over of the majority of the front garden is not a traditional feature of the conservation area. Whilst there are some quite large areas of hard surface along Cluny Gardens, those gardens may not be within conservation area. The paving over the majority of the front garden is not characteristic of the intrinsic character of the conservation area.

The works are highly visible from the public street. The appearance of the conservation area will not be preserved. As stated above, this villa conservation area is characterised by extensive garden settings, stone boundary walls and spacious roads. The loss of this green garden fails to preserve the character of the conservation area.

Conclusion in relation to the conservation area

The works will not preserve or enhance the special character and appearance of the conservation area.

The proposals comply with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

DP 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 states permission will be granted for development is compatible with the character of the existing building and neighbourhood character.

The Guidance for Householders refers to the loss of original walls or railings and adverse effect this can have on the character and setting of an area.

The proposals fail to preserve or enhance the character or appearance of the conservation area as detailed in section a) of the assessment and are therefore contrary to LDP policy Env 6 and Des 12.

Neighbouring Amenity

With respect to privacy, overshadowing and loss of daylight or sunlight, the proposals have been assessed against requirements set out in the non-statutory 'Guidance for Householders'. The proposals will not result in any unreasonable loss to neighbouring amenity.

Conclusion in relation to the Development Plan

The proposals are not of an acceptable scale, form and design and are not compatible with the existing dwelling and will neither preserve or enhance the special character and appearance of the conservation area.

Therefore, the proposals do not comply with LDP policy Env 6 and Des 12 and the overall objectives of the Development Plan.

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.

The proposal complies with Paragraph 29 of SPP.

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.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

All comments have been assessed above.

material considerations

- Loss of the garden
- Increase in flooding
- Proposed gates are not traditional

Conclusion in relation to identified material considerations

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

Overall conclusion

The proposed works to the dwelling will not preserve or enhance the character and appearance of the conservation area and are in not accordance with the Development Plan. The works are not compatible with the existing dwelling and surrounding neighbourhood character but will not result in an unreasonable loss of neighbouring amenity. There are no material considerations which indicate that the proposal should be granted. Therefore, the proposal is not acceptable.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

1. The proposal is contrary to the Local Development Plan as proposed gate will adversely impact on the setting of the villa properties which will fail to preserve the character or 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: 28 April 2022

Drawing Numbers/Scheme

01-03

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.

Comments for Planning Application 22/02045/FUL

Application Summary

Application Number: 22/02045/FUL

Address: 49 Cluny Gardens Edinburgh EH10 6BL

Proposal: Alterations to the front garden landscaping. Increase area of pavers by removing section of grass. Increase driveway width and install new gates.

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 and Borders Cases Panel has examined the application to form a new driveway to a property which lies within the Morningside Conservation Area, and we object.

The current proposal results in the loss of over half of the remaining garden ground to the front of the property. The erosion of the garden has a detrimental impact on the streetscape and wider Conservation Area.

Similarly, grass and softscape allow for drainage, which is particularly important with increased rainfall to help prevent flooding.

The proposed gates are non-traditional in design and do not utilise the established palette of materials within the Conservation Area. The proposed height and solid design are not in-keeping with the streetscape and should be amended.

These elements of the proposal fail to preserve or enhance the special architectural character of the Conservation Area, contradict Edinburgh Council guidance and conflicts with the Local Development Plan policy ENV 6. We therefore object to these proposals.