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EH4 2HU

**Decision date: 1 July 2022**

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

Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair. At 1 Avenue Villas Edinburgh EH4 2HU

**Application No:** 22/02322/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 29 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:-**

**Reasons:-**

1. The proposal is contrary to the Local Development Plan Policy Env 12 in respect of Trees, as the location of the extension would impact on the long-term growth of replacement trees.

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

Drawings 1-7, 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 works have no significant impact on the character of the listed building and are acceptable in regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, the proposal would impact on the replacement trees within the TPO site contrary to the objectives of LDP policy Env12.

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 Stephen Dickson directly at [stephen.dickson@edinburgh.gov.uk](mailto:stephen.dickson@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](http://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](mailto: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  
1 Avenue Villas, Edinburgh, EH4 2HU**

**Proposal: Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.**

**Item – Local Delegated Decision  
Application Number – 22/02322/FUL  
Ward – B05 - Inverleith**

## **Recommendation**

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

## **Summary**

The works have no significant impact on the character of the listed building and are acceptable in regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, the proposal would impact on the replacement trees within the TPO site contrary to the objectives of LDP policy Env12.

## **SECTION A – Application Background**

### **Site Description**

The property is an end-terraced villa, forming part of an isolated Georgian group, north-west of the Stockbridge district. It was listed category C on 7.10.2003 ref.49516. The trees on the west section of the site are protected by a Tree Preservation Order. A number of trees were removed on the north section of the TPO and replanting as taken place in reparation.

### **Description Of The Proposal**

The application proposes removal of the existing rear extension and replacement with a "wrap-around" form: 6 x 3m on the rear (south) side, with a flat roof; and 5 x 11m on the gable (west) side. This is of contemporary design with a monopitched slate roof. Walls are mainly glass and timber cladding.

### **Supporting Information**

A tree survey and surface water management plan were submitted.

### **Relevant Site History**

14/05083/FUL  
1 Avenue Villas  
Edinburgh  
EH4 2HU

Alterations to house and form new vehicle access to front garden along with the removal of the structurally unstable garden wall (as amended to locate access and parking to side)

Granted

17 February 2015

14/05083/LBC  
1 Avenue Villas  
Edinburgh  
EH4 2HU

Alterations to house and form new vehicle access to front garden along with the removal of the structurally unstable garden wall (as amended to locate parking and access to the side)

Granted

29 January 2015

15/00682/TPO  
1 Avenue Villas  
Edinburgh  
EH4 2HU

Application to carry out remedial works as detailed in accordance with tree condition assessment report.

Granted

23 April 2015

### **Other Relevant Site History**

### **Consultation Engagement**

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 1 July 2022

**Date of Advertisement:** Not Applicable

**Date of Site Notice:** Not Applicable

**Number of Contributors:** 3

## **Section B - Assessment**

### **Determining Issues**

Due to the proposals relating to a listed building(s), this report will first consider the proposals in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development harming the listed building or its setting?
- 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 listed building and its setting?**

The following HES guidance is relevant in the determination of this application:

- Managing Change -Extending Listed Buildings

The property has an existing non-original extension on the south side. There is no objection to the removal of this element.

The essential character of the group lies mainly in its overall form and frontage (to the north). The proposal has minimal impact on the historic fabric and building across the blank gable and the section already covered by an extension has no significant impact on the character of the building.

## **Conclusion in relation to the listed building**

The works have no significant impact on the character of the listed building and are acceptable in regard to Section 59 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 4
- LDP Environment policies Env9 Env12 and Env21
- LDP Design policy Des12

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policy Env 4.

Historic Environment

The works have no significant impact on the character of the listed building and are acceptable in regard to LDP policy Env4.

Impact on Trees

LDP policy Env12 considers impact on trees.

The trees on the western section of the site are covered by a TPO and this is a major impediment to development.

Mature trees on the north section were previously removed and are now replaced by new trees. Whilst the proposal has no impact on the root system of these trees, the purpose of the replanting is to eventually produce trees of the scale which were removed. The proposed extension would impact on the potential growth and future of the replacement trees, undermining the long-term purpose of the TPO.

Consequently LDP policy Env12 is not met.

Flood Risk

LDP policy Env21 considers flood protection

A surface water management plan was submitted. The works would have no significant impact on flood risk.

Archaeology

LDP policy Env9 considers sites of archaeological significance.

The site has potential for archaeological interest and if approved a standard archaeological condition would be applicable.

Scale, Form and Design

LDP policy Des12 considers extensions to houses.

The proposal raises no policy concerns in relation to this policy.

### **Conclusion in relation to the Development Plan**

Whilst the majority of policies are met, policy Env12 in relation to trees is not, and the compliance with other policies does not outweigh the non-compliance with Env12. The application is refused for this reason.

### **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 has been consulted on but has not yet 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

Three objections were received, including objection from the Cockburn Association. A summary of the representations is provided below:

#### *material considerations*

- \* impact on the listed building - addressed in section a)
- \* impact on TPO - addressed in section b)

*non-material considerations* - long planning history

## **Conclusion in relation to identified material considerations**

The material issues raised are addressed above.

### **Overall conclusion**

The works have no significant impact on the character of the listed building and are acceptable in regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, the proposal would impact on the replacement trees within the TPO site contrary to the objectives of LDP policy Env12.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

### **Reasons**

1. The proposal is contrary to the Local Development Plan Policy Env 12 in respect of Trees, as the location of the extension would impact on the long-term growth of replacement trees.

### **Background Reading/External References**

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

**Further Information** - [Local Development Plan](#)

**Date Registered:** 29 April 2022

### **Drawing Numbers/Scheme**

1-7

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Stephen Dickson, Senior planning officer

E-mail:stephen.dickson@edinburgh.gov.uk

## Appendix 1

### **Consultations**

The full consultation response can be viewed on the Planning & Building Standards Portal.

# Comments for Planning Application 22/02322/FUL

## Application Summary

Application Number: 22/02322/FUL

Address: 1 Avenue Villas Edinburgh EH4 2HU

Proposal: Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.

Case Officer: Local1 Team

## Customer Details

Name: Mr Alastair McKie

Address: 1 Rutland Court, Edinburgh EH3 8EY

## Comment Details

Commenter Type: Other

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Dear Sir

Planning Application 22/02322/FUL ("Planning Application") to Demolish existing rear extension and form new extension to the side and rear to house living and dining facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over exiting stair ("Proposed Development")

Listed Building Consent Application 22/02323/LBC ("LBC Application") to Demolish existing rear extension and form new extension to the side and rear to house living and dining facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair

The property affected by the Planning Application and LBC Application is No 1 Avenue Villas ,Edinburgh EH4 2HU

Katrina Lumsdaine and Bruce Farquhar, 2 Avenue Villas, Edinburgh (our "Clients")

1.0 TAKE NOTICE that our Clients OBJECT to both the Planning Application and the LBC Application on planning grounds. These grounds of objection are fully explained below.

1.1.No 1 Avenue Villas form part of a terraced lager listed building that comprises 1, 2 and 3 Avenue Villas. We attach the citation of the Listing in Appendix 1. The listed buildings are characterised by a relatively simple architectural form and comprise 2-storey 7-bay terrace of 3 houses.

1.2. Historic maps suggest the area to the west of the gable (where part of the Proposed Development is to be located) was either a separate plot, or at least in separate use (possibly as part of the farm). The garden wall separating the two still exists. This separate plot of is subject to a Tree Preservation Order No.1 2006 (Avenue Villas, Edinburgh), Tree Preservation Order No 157 ("TPO") and was until recently characterised by mature trees that made an important contribution to the amenity of the area and the setting of the listed buildings.

1.3.No 1 Avenue Villas has a complex planning history characterised by repeated and unsuccessful attempts by the applicant to obtain planning and listed building consent for unacceptable developments and removal of the trees the subject of the TPO. These matters will be well known to the Council and can be viewed on the Council's planning portal :-

- Ref. No: 15/05425/FUL - New House and Garden Ground

- Ref. No: 15/05425/LBC - Alterations to boundary wall to form new entrance for new house in garden grounds

- Ref. No: 16/05816/LBC - Proposed new house in the grounds of a listed building

- Ref. No: 16/05815/FUL - Proposed new house adjacent to 1 Avenue Villas

- Ref. No: 20/03476/LBC - Demolish existing rear extension and form new extension to the side and rear to house living, dining and kitchen facilities as well as some internal alterations to existing dwelling

- Ref. No: 20/03559/FUL - Demolish existing rear extension and form new extension to the side and rear to house living, dining and kitchen facilities as well as some internal alterations to existing dwelling

- Ref. No: 21/03857/FUL - Demolish existing rear extension and form new extension to the side and rear to house living and dining facilities. Form basement to extension with guest bedroom and plant room. Minor internal remodelling of existing house.

- Ref. No: 21/03858/LBC - Demolish existing rear extension and form new extension to the side and rear to house living and dining facilities. Form basement to extension with guest bedrooms and plant room. Minor internal remodelling of existing house.

1.4. It appears that in each case that the applicant, when faced with an impending decision to refuse, has taken the decision to withdraw and resubmit. Rarely if ever has a listed property in Edinburgh been subject to such an attritional barrage of applications. Whilst one might expect an applicant on occasion to test the water with an application and to establish the attitude of the planning authority and his neighbours, in the present case the applicant and his architect appear to be unable to heed sound planning advice that the listed building affected is an architecturally important building and is very sensitive to what amounts to major and unsympathetic

development.

1.5. We consider that the advice of the Council Planning Officer, Diana Garrett in her email to the applicant's agent dated 3 December on applications 21/03857/FUL and 21 /03858/LBC is a relevant and important planning basis for assessing the Planning Application and the LBC Application. We set out the terms of her email with our Clients' comments in red beneath commenting on the extent that the Planning Application and the LBC Application heed this sound advice. As you will quickly ascertain they do not.

"Design

The reduction in scale between Scheme 1 and 2 is very welcome. The configuration of the plan, its massing and materials, however, have an uneasy relationship with the pattern and grain of historic built form. This is exacerbated by:

Presenting a highly visible glass "frontage" to Crewe Road South. The preference is for a more solid frontage - replicating the gable/main road relationship."

Clients' Response

The frontage proposed to the south west, fronting the public road does not in any way replicate or complement the existing gable/main road relationship of the listed building and the Proposed Development is characterised by a highly visible glass frontage. The scale and massing of the Proposed Development is not acceptable. Given the likely tree loss this effect will be exacerbated.

"Wrapping the extension around the corner of the building. The historic maps suggest the area to the west of the gable was either a separate plot, or at least in separate use (possibly as part of the farm) (maps below - 1933 left; 1877 right). The garden wall separating the two still exists. Merging the plots with a modern extension interrupts the strong, surviving grain/ plot pattern. The preference would be for the extension to sit entirely within the plot lining C Rd S, and be subservient to the main building - i.e. either set back from both corners of the gable, or respecting the footprint of the "former building" mentioned in the clip from Drg 02 below. I note that both neighbouring properties have single storey extensions. The proposed design of the extension is overly complex. It is too busy and would benefit from being more restrained. As tabled, it's competing with the historic built form."

Clients' Response

The Proposed Development has quite simply ignored this advice and if approved would unacceptably wrap the extension around the building and sit as a modern and complex extension jarring the strong surviving grain/plot pattern of the listed building. The unacceptable effect of "merging plots" is maintained with the Proposed Development. The extension is still of considerable scale and the external area has only been reduced in area from the previous

application from 77.5sqm to 71.2sqm with the GIA at ground floor level reducing from 70.7sqm to 65sqm. These are modest reductions. The GIA of the existing house is 77.5sqm at ground floor level. On no reasonable basis can the Proposed Development be considered to be subservient to the existing listed house and if consented would become overwhelming and dominant.

"The proposed new basement has the potential to impact on flooding and drainage. A Surface Water Management Plan (SWMP) will be required to confirm the drainage proposals and to support the planning application. An engineers report would therefore be required."

#### Clients' Response

No SWMP has been provided and it is essential that it is. The Planning Application and LBC Application must not be progressed further until it has been lodged. Our Clients reserve the right to comment upon on these matters if and when it is lodged.

#### "Trees

There is extensive planning and enforcement history to the trees within the site. The efforts of CEC to ensure replacement planting recognised the importance of re-instating the amenity and character of the locality lost by the illegal felling of trees by the owner. The proposal will adversely affect amenity and character of the locality the TPO and subsequent enforcement action taken were intended to protect by

- physical damage to protected trees and also creating a juxtaposition which does not allow replacement trees enough space to grow without coming into conflict with the proposed building thereby creating likely pressure to have trees removed as happened with the original tree which were felled, and

- Bringing the building closer to the trees and Crewe Road South making the building more prominent thereby undermining the visual the trees and woodland strip make. In addition, the current applications do not provide a full tree survey to address concerns.

The proposal is contrary to ENV 12 and would have an adverse effect on amenity."

#### Clients' Response

Our Clients agree with the above statements but have serious concerns that the Proposed Development will adversely impact on the trees that have been planted on the plot and are protected by the TPO and that are in close proximity to the Proposed Development.

Our Clients have no confidence on the basis of his prior conduct that the applicant will respect these protected trees in any way. It is alarming that whilst the Design Statement makes reference

to an Arboriculture Impact Assessment and Tree Survey (that is stated to accompany the Planning Application and LBC Application) no such assessment and survey has been provided. These are essential matters to be addressed. Due to this, the Planning Application and LBC Application must not be progressed further until they have been lodged. Our Clients reserve the right to comment on these matters if and when they are lodged.

## "Conclusion

Having reviewed the information there are considerable concerns with regard to current proposals, which, as presented, are contrary to planning guidance. The principle of an extension is accepted, but one that respects the historic built form and woodland setting of the site. The current scheme with the existing design and lack of supporting information in relation to trees and flooding would be recommended for refusal.

Our advice would be to withdraw the current applications and resubmit once a revised scheme has been prepared and the additional information is provided."

## Clients' Response

From an assessment of the Planning Application, LBC Application and supporting plans and documents it is clear that the above conclusion applies equally to the Planning Application and LBC Application and it must be refused.

1.6 It is considered that the Proposed Development would (if approved):-

- Unacceptably impact on 1, 2 and 3 Avenue Villas (in regard to its features of special architectural or historic interest) as an important listed building and also adversely affect its setting.
- Gives rise to unassessed structural and flooding impacts on 1-3 Avenue Villas owing to the incorporation of a substantial basement level.
- Unacceptably impact on the trees that have been replanted as a result of a tree replanting notice (contested by the applicants) which was served by the Council following unauthorised felling of mature trees that were protected by a TPO.
- Be contrary to the Council's statutory duties and policies as set out below.

2.0 Legal Assessment- Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Town and Country Planning (Scotland) Act 1997

2.1 Sections 14 and 59 of the Listed Building Act 1997 contain important statutory duties that must be complied with by the Council in its determination of the Planning Application and LBC Application. These are set out below-

"Section 14 --Decision on (LBC) application.

..(2) In considering whether to grant listed building consent for any works, the planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

"Section 59.- General duty as respects listed buildings in exercise of planning functions.

(1) In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"

2.2 Section 25 of the Town and County Planning (Scotland) Act 1997 establishes the primacy of the development plan. Where a proposed development is contrary to the development (as is the case with the Planning Application) there is a legal presumption against permission being given and in this case there are no material considerations that indicate otherwise.

"Section 25 Status of development plan

(1) Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise-  
(a) to be made in accordance with that plan..."

### 3.0 Policy Assessment

3.1 We have examined the Council's policies on extensions to listed buildings including the adopted Local Development Plan and the Guidance on Listed Buildings and Conservation Areas (updated in February 2019) and other important statements of national planning policy. The statutory duties set out above are enshrined in the Development Plan Policies and national policies.

3.2 Policy Env 4 Listed Buildings - Alterations and Extensions of the Local Development Plan advises that proposals to alter or extend a listed building will be permitted where there will be no unnecessary damage to historic structures or diminution of its interest; and where any additions are in keeping with other parts of the building. The Proposed Development does not protect the character and appearance of the listed building-the special architectural and historic interest will be unacceptably adversely affected. As can be seen from the planning drawings the Proposed Development is not subordinate to the main historic structure, either in scale or form. The Proposed Development is detrimental to the listed building's character and appearance. The Proposed Development would extend and elongate the original building in a way that impacts upon its special interest. The Proposed Development due to its scale, massing and inappropriate design is clearly contrary to this policy.

3.3 The Guidance states that extensions should be subservient to the main building and will rarely be permitted to principal elevations. The Proposed Development "wraps around" the existing listed

building is substantial and is not subordinate to the main building. It adversely impacts on principal elevations- and will be highly visible particularly when viewed from the south west. It will be readily seen from the principal public view points on Crew Road South above the listed boundary wall. The Proposed Development due to its scale massing and design is clearly contrary to the Guidance.

3.4 The Proposed Development will also harm the setting of the overall listed building. Its setting includes views to and over the building.

3.5 The Proposed Development is excessive in scale and would be a dominant and unacceptable feature. It jars with the elegant listed building and is insensitive to its essential characteristics and unique setting. It is contrary to Local Plan Policy ENV 3 which seeks to protect listed buildings from unacceptable development.

3.6 The Proposed Development is also contrary to Policy Des 1 - Design Quality which opposes poor quality development or that which would be damaging to the character or appearance of the area around it, particularly where this has a special importance. We question whether it is acceptable to have such a scale of development with habitable rooms with no natural light.

3.7 The Proposed Development is also contrary to Policy Des 3 - Development Design which only allows new development that will have a positive impact on setting and wider townscape; retains important features; respects the amenity of neighbours in terms of preserving amenity and privacy. The policy advises particularly against proposals that would be damaging to the character or appearance of the area around it, particularly where this has a special importance.

- The highly visible glass elements have an uneasy relationship with the pattern and grain of the historic built form.

- Importantly, the Proposed Development "wraps around" the listed building, extending the existing house from its current plot, into the woodland/adjoining plot. The adjoining woodland plot has clearly been quite separate. Maps dating back to the 1800s show the woodland plot as quite separate, separated from the current house plot by a garden wall which still exists and forms part of the listed building.

- It is noted that there have been previous buildings on the adjoining woodland plot. However as can be clearly seen from the terms of the Listed Building Citation (set out in full above), these buildings were glasshouses for the nursery garden. These are all entirely consistent with the rural past, the basis for the listing of this building. They are not a precedent for the Proposed Development

- Connected to this, there are existing modest one-story extensions currently on the properties on the site. They are modest uniform boxes. They are single height, with uniform walls constructed from one material and roof. They are not complex and importantly are not competing with the existing listed building. The Proposed Development is in comparison of significant scale and massing which will draw the eye competing with the current listed building for dominance.

3.8 The Proposed Development is also contrary to Scottish Planning Policy and the Historic Environment Policy for Scotland. These national planning policies seek to protect important built heritage from unacceptable development. The Proposed Development is also contrary to the Draft

NPF4 and City Plan 2030.

#### 4.0 Unassessed structural impacts on 1-3 Avenue Villas

4.1 The Proposed Development incorporates a significant new development at basement level. In a report by McColl Associates, Consulting Civil and Structural Engineers, dated 4 February 2016 reference was made to the property having shallow foundations- no more than 500mm. It is deeply concerning that the scale of these works (which do not appear to have been assessed from a structural point of view) may destabilise 1-3 Avenue Villas to their significant detriment. No information is provided on the scale of the construction works impacts. Stability issues are a relevant planning consideration and the preservation of ground stability is covered under the adopted local plan policy ENV22. This states that planning permission will only be granted for development where: .....b) there will be no significant adverse effects on: on ground stability c) appropriate mitigation to minimise any adverse effects can be provided

4.2 In the absence of any certainty being provided that the works will not have an adverse effect on ground stability then the Proposed Development is contrary to this policy.

4.3 It is also of very considerable concern that there appears to have been no attempt to consider the flooding issues. There is a statement that a Flood Risk and Surface Water Management Plan will accompany this application. This is not on the Council's website. We therefore assume that it has not been produced.

4.4 Buildings of this age have shallow foundations, as emphasised by the applicant himself when he sought to argue that it was not possible to have any trees in the woodland near to the existing building, lest damage be caused to the shallow foundations. It can only reasonably be assumed that digging into a basement level exactly next to the existing listed building will have a material impact on the building itself. Our Clients are aware of structural issues being caused to other buildings in Inverleith when basements were dug to add to extend existing buildings. Reference is made to the information in the public domain concerning a basement extension which caused material damage to neighbouring buildings:

<https://www.edinburghlive.co.uk/news/edinburgh-news/furious-locals-edinburgh-object-neighbours-21198261>

4.5 Similarly, flooding is a real issue in the area. There have been recent significant flood impacts in both neighbouring Stockbridge and off Crewe Road South. It can only reasonably be assumed that replacing a woodland, which supports water storage, with a building, including digging down to form a basement will increase flood risk to the whole area. Comelybank is so named as it was formed on a comley bank of a river. The site itself sits just back from that ancient river. As expected, that river ran at the bottom of a gully. That gully is now banked by Orchard Brae and Crewe Road South. Therefore, it can reasonably be assumed that current woodland has formed an important role in managing water in the gully between these two roads which slope upwards from Avenue Villas. Flooding is likely to increase by removing that woodland to replace with a

basement building.

4.6 Absent any Surface Water Management Plan and full structural engineering report regarding structure and flooring, the Proposed Development cannot be said to comply with the policy and therefore must be refused.

#### 5.0 Impacts on Trees - Tree Preservation Order 157

5.1 The site of the Proposed Development was, until recently, strongly characterised by the presence of many mature trees which were and continue to be the subject of The City of Edinburgh Tree Preservation Order No.1 2006 (Avenue Villas, Edinburgh), Tree Preservation Order No 157 ("TPO"). This is the strongest protection that the Council can provide to trees and underlines their importance and the positive effect which they had (until they were felled) and will continue to have, following the subsequent replanting, on the character and amenity of the area.

5.2 The TPO covers the whole area in which the Proposed Development is located. There are currently no buildings or developments in this area, nor have there been since the TPO was granted. It is a woodland.

5.3 The TPO expressly prohibits, without permission, the wilful damage or destruction in a woodland specified in the TPO.

5.4 We attach an aerial photograph from Google Earth in which the canopies of the trees can be seen across the site of the Proposed Development including that area over which the Proposed Development is intended to be built. These trees made an important contribution to the amenity of the area generally but also to the setting of and providing a pleasant bucolic gateway to 1, 2 and 3 Avenue Villas as a listed building. This is the condition to which the site will return upon the maturing of the trees which have been replanted on the site. As can be seen, there is simply no room for the trees' canopy to mature to the same levels (as they would and should naturally do), whilst still accommodating an extension of the size sought.

5.5 The photograph does not reveal the size of the root systems, however we understand that this would be expected to cover at least as wide an area as that of the canopy.

5.6 British Standard "Trees in Relation to Design, Demolition and Construction to Construction - Recommendations" (BS 5837) (2012), details the steps that should be taken to ensure that trees are appropriately and successfully retained when a development takes place. It provides that it is vital that there is a Tree Constraints Plan and that such a plan should clearly show the Root Protection Area of each tree. On the applicant's own submissions in his previous application by the same firm of architects, which is referenced in the current application, a root protection area of 25m<sup>2</sup> plus should be allowed for the sycamore and lime trees. No Tree Constraints plan is provided with this application. There is no allowance for a root protection area of anything approaching that size.

5.7 The Planning Application states that an Arboriculture Impact Assessment and Tree Survey will accompany the application. None is produced on the City of Edinburgh Council's website. As with the missing structure and flooding report, without our Clients having an opportunity to consider any assessment and survey, they cannot adequately comment on this. Without such an opportunity,

the application must not be determined. However, standing the comments made above, it is fair to assume that the Planning Application cannot be compatible with the existing TPO. Our clients reserve the right to comment on these matters if and when they are lodged.

#### Comments on the Planning Application

5.8 The Proposed Application proposes construction works and an extension to be built in the woodland specified in the TPO. No permission to damage and destroy the woodland is sought in the Planning Application. Indeed, there is little reference to the TPO save a suggestion that there is an attempt to avoid the existing trees. However, in so far as any information is given, there is an indication that all the trees in the TPO may be intended to be removed in that they all appear to be encircled by a red circle in the proposed site plan and plans. This is entirely inconsistent with the TPO.

The Council's the City of Edinburgh Local Plan ("Adopted Local Plan") states:-

#### "Protection of Trees Policy Env 12 - Trees

Development will not be permitted if likely to have a damaging impact on a tree or trees protected by a Tree Preservation Order or other trees worthy of retention on or around a proposed development site, unless necessary for good arboricultural reasons. Where such consent is granted, replacement planting will be required to offset the loss to amenity.

The Council has placed Tree Preservation Orders on a large number of trees where they make a positive contribution to the character of the urban or rural environment, particularly where trees are threatened by development proposals."

5.9 The text of Policy ENV 12 quoted above outlines that TPOs will be made where they make a positive contribution to the character of an area and where they are threatened by development proposals. This is particularly relevant to the case in hand. No arboriculture considerations are put forward for the diminution of the woodland area. Indeed, no reasons at all are put forward save the convenience to the Proposed Development.

5.10 It is considered that the Planning Application is contrary to Policy ENV 12. The Council has the power to refuse the Proposed Development due to an adverse impact on the protected woodland. It should invoke those powers to preserve the amenity and character of the site.

#### Proximity of Building to Trees

5.11 The trees remain subject to the TPO. The reasons for the TPO remain unchanged. This is an important historic site. The woodland increases the amenity and speaks to the rural history of the listed building next to which they are located. They provide an important positive contribution to the area.

5.12 It was the basis of the applicant's appeal to the Scottish Ministers that the size of the current site, without any extension to the listed building, was too small to accommodate the replanting of the 13 extra-heavy trees. It would be absurd now to propose that the same 13 trees can be accommodated in the far smaller site which would remain after the Proposed Development.

5.13 Turning to some of the arguments put forward previously by the applicant as to why the current site was too small to accommodate the 13 trees, he relied upon the following:

- NHBC recommendation that 7 metres be allowed between a building and trees.

- British Standard BS5837:2012 that the trees should be a minimum of 1 - 2 metre from masonry boundary walls and a minimum of 0.5 - 1.2 metres from a building.

5.14 Whilst these arguments were rejected based on the full current site, they are applicable to any attempt to compress the trees into the smaller area which would remain after the extension is built. The minimum spacing distances cannot be achieved in the reduced area which will remain after the completion of the extension.

5.15 Yet notwithstanding this, the applicant is not seeking to address the need to damage, remove and restrict the trees, both in the construction works and once the proposed extension is erected.

5.16 None of this is in accordance with the requirements of British Standard BS5837:2012 or the NHBC guidance previously cited by the applicant.

## 6.0 Conclusions

6.1 We consider that the Application is contrary to the Adopted Local Plan and approving it would not be in line with the Council's statutory duties under s59 and s14 of the Listed Building Act. Section 25 of the Town and Country Planning (Scotland) Act states that applications that do not accord with the Adopted Local Plan should not be approved unless material considerations indicate otherwise. There are no material considerations that indicate otherwise and we respectfully invite the Council to refuse both the Planning Application and the LBC Application.

Kindly acknowledge safe receipt.

Yours faithfully

Alastair McKie

Partner

Accredited Specialist in Planning Law

Legal Associate of the Royal Town Planning Institute

Head of Planning and Environment

For and on behalf of Anderson Strathern LLP

Appendix 1

CREWE ROAD SOUTH, 1, 2, AND 3 AVENUE VILLAS WITH BOUNDARY WALL AND  
RAILINGS LB49516

Status: Designated

Summary

Category

C

Date Added

07/10/2003

Local Authority

Edinburgh

Planning Authority

Edinburgh

Burgh

Edinburgh

NGR

NT 23507 74709

Coordinates

323507, 674709

Description

Early 19th century, possibly incorporating earlier fabric. 2-storey 7-bay terrace of 3 houses. Timber panelled doors with 3-pane letterbox fanlights. Random rubble with ashlar dressings; brick relieving arch to E elevation.

12-pane glazing in timber sash and case windows. Graded grey slates. Corniced stacks with tall cylindrical cans.

BOUNDARY WALL AND RAILINGS: tall stone-coped rubble wall (bowed to SE) surrounds property; spear-headed cast iron railings on ashlar-coped rubble wall separate houses.

Statement of Special Interest

Avenue villas were previously the farm house for the Comely Bank estate, which belonged to Sir William Fettes. The OS map of 1853 shows that the farm has become a nursery garden, and the farmhouse, already divided in 3, is surrounded by glasshouses. Altered at an early date, Avenue villas are an interesting survival, telling the story of the area's rural past, on the periphery of the city. (Our emphasis added).

References

Bibliography

Appears on Robert Kirkwood's map of 1817."

Documents Attached:

Tree Replacement Notice dated 18 November 2016

Scottish Ministers' Decision Notice 5 May 2017

Email from CEC dated 22 July 2019

Google Maps Image

# Comments for Planning Application 22/02322/FUL

## Application Summary

Application Number: 22/02322/FUL

Address: 1 Avenue Villas Edinburgh EH4 2HU

Proposal: Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.

Case Officer: Local1 Team

## Customer Details

Name: Lord Cockburn Association

Address: Trunk's Close, 55 High Street Edinburgh

## Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The Association has examined the latest planning application at the request of members and stakeholders. After reviewing the proposals, we would wish to lodge an objection to the planning application and associated listed building consent application.

The analysis provided by the applicants of the previous proposals (withdrawn) illustrate the essential point that any extension to the side of this property has a material impact on its architectural and historic interest. The loss of a section of original garden wall with an incongruous extension is objectionable in both impact to listed fabric as well as affecting the most public elevation as seen from Crewe Road South. As such, we believe that the proposals are not in accordance with Policy ENV4 - Listed Buildings (Alterations and Extensions).

We also have concerns regarding the proximity of the proposed extension to the root systems of trees that are covered by Tree Protection Orders. Policy ENV12 on Trees states "Development will not be permitted if likely to have a damaging impact on a tree protected by a Tree Preservation Order or on any other tree or woodland worthy of retention unless necessary for good arboricultural reasons. It is likely that damage will be done as result of this proposal.

A more modest redesign of the existing garden room may be possible, which if sensitively integrated with the existing boundary wall but not breaching it might result in a satisfactory scheme.

# Comments for Planning Application 22/02322/FUL

## Application Summary

Application Number: 22/02322/FUL

Address: 1 Avenue Villas Edinburgh EH4 2HU

Proposal: Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.

Case Officer: Local1 Team

## Customer Details

Name: Miss Anne Hally

Address: 3 Avenue Villas Edinburgh

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Anne Hally & Derek Peacock

3 Avenue Villas

Edinburgh

EH4 2HU

Planning Officer

Planning & Strategy

City Development

The City of Edinburgh Council

Business Centre G2

Waverley Court

4 East Market Street

Edinburgh EH8 8BG

31 May 2022

By email and online portal

Dear Sir,

Planning Application 22/02322/FUL ("Planning Application") to Demolish existing rear and form new extension to the side and rear to house living and dining facilities.

Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair("Proposed Development").

Listing Building Consent Application 22/02323/LBC ("LBC Application")to Demolish existing rear extension and form new extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.

Anne Hally and Derek Peacock, 3 Avenue Villas, Edinburgh, EH4 2HU OBJECT to both the Planning Application and the LBC Application.

The grounds of our objection are as follows.

Historical context:-

No 1 Avenue Villas has a complex planning history characterised by repeated and unsuccessful attempts by the applicant to obtain planning and listed building consent for unacceptable developments and removal of trees the subject of TPO's. These will be well known to the Council and can be viewed on the Council's planning portal. It appears that, in each case, the applicant, when faced with an impending decision to refuse, has taken the decision to withdraw and resubmit. This is a special location (due to it's historic interest and it's "C" listed status) and we are concerned that this new proposed development is still not taking this into account.

Tree Protection:-

There is extensive planning and enforcement history to the trees within the site and it is a very sensitive issue. Initially there was unauthorised felling of mature trees that were protected by TPO's, this was followed by replanting due to a notice served by the Council, all of which was a very long and drawn out process. Our concern now is for the newly replanted trees which are protected by the TPO and the impact this development may have on them. As you can see from the Google Earth image at the foot of this objection, there was once a thriving canopy of trees which, due to the felling, is now gone and this, in our opinion, is a significant loss to the setting of 1-3 Avenue Villas. The new trees however are just beginning to become established and are at a very vulnerable stage where any potential building works could have a considerable detrimental effect on their growth and health. The Design Statement provided by davidblakie Architects mentions very little about the trees. An Arboriculture Impact Assessment & Tree Survey was due to accompany the application but we have not as yet been able to find any information on the portal which makes it extremely difficult to have any confidence in this application.

Unassessed structural and flooding impacts on 1-3 Avenue Villas:-

We are concerned about both the structural and flooding impacts on 1-3 Avenue Villas owing to the incorporation of a substantial basement level in this proposed development.

In a report by McColl Associates, Consulting Civil and structural Engineers, dated 4th February 2016, reference was made to the property having shallow foundations - no more than 500mm. It is concerning that the scale of these works may destabilise 1-3 Avenue Villas to their significant detriment. There does not appear to have been an assessment from a structural point of view. In the absence of this report and supporting data the only logical course of action is recommend that this proposed development is denied.

#### Flooding:-

We have been aware of recent flooding issues in the area there have been significant flood impacts in both neighbouring Stockbridge and off Crewe Road South and our concern is that digging down to form a basement will increase the flooding risk to the whole area. It can only be assumed that replacing a woodland, which supports water storage, with a basement building, will increase risk.

The Design Statement is unclear and indicates that a Flood Risk & Surface Water Management Plan will accompany the application but, yet again, this material does not seem to be available. Therefore, due to the absence of a the specialised report the Proposed Development must be refused.

#### Conclusion

While we have absolutely no objection to an extension being erected it must be in keeping with the adopted local plan and the Council's statutory duties under s59 and s14 of the listed buildings act.

We have no confidence on the basis of the applicants' prior conduct that he will respect these protected trees in any way. It is worrying that whilst the Design Statement makes reference to an Arboriculture Impact Assessment and Tree Survey (that is stated to accompany the Planning Application and LBC Application) no such assessment and survey has been provided. These are essential matters to be addressed. Due to this, we believe that the Planning Application and LBC Application must not be progressed further until they have been lodged. We reserve the right to comment on these matters if and when they are lodged.

Stability issues are also a relevant planning consideration and the preservation of ground stability is covered under the adopted local plan policy ENV22. This states that planning permission will only be granted for development where: .....b) there will be no significant adverse effects on: on ground stability c) appropriate mitigation to minimise any adverse effects can be provided In the absence of any certainty being provided that the works will not have an adverse effect on ground stability then the Proposed Development is contrary to this policy.

It is also of very considerable concern that there appears to have been no attempt to consider the flooding issues. There is a statement that a Flood Risk and Surface Water Management Plan will accompany this application. This is not on the Council's website. We therefore assume that it has

not been produced.

Based on the issues presented above we strongly believe this planning application should be refused.

Yours sincerely

Anne Hally & Derek Peacock  
3 Avenue Villas  
Edinburgh EH4 2HU

Google Earth Imagery

Street view 2008

Street view 2012

Street view 2015

Street view 2017

Street view 31 May 2022