

1 Avenue Villas

**City of Edinburgh Council Local
Review Body Rebuttal Statement**

Prepared on behalf of Mr J Hancox

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1.0

Introduction

1.0 Introduction

1.1 Purpose of this report

This Statement is submitted on behalf of Mr J Hancox (hereafter referred to as 'the Applicant') in support of a Planning Local Review Body (PLRB) appeal against the City of Edinburgh Council, who refused permission under delegate powers for:

'Demolition of an existing rear extension to the side and rear to house living, dining and utility facilities and to 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'.

The application was refused on Friday 1st July 2022 with the refusal reason being:

'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'

The purpose of this statement is to assist members of the PLRB in their assessment and determination of the appeal by addressing representations made against the appeal which were received on 19th October 2022. These representations were made by Alistair McKie of Anderson Strathern, on behalf of a group of residents and by the residents of the neighbouring property, 3 Avenue Villas. We would like to address points made within each representation in turn, below.

It should be clear from the evidence provided to the PLRB that this matter relates to a simple neighbour dispute rather than a material planning matter over what should be a simple and straightforward application which could almost be classed as permitted development.

1.2 Representations made by Alistair McKie of Anderson Strathern on behalf of local residents.

With particular reference to point 2 which relies entirely on a google map image showing the site prior to some of the trees being removed, and where it is stated that is how the site should look "should the trees be allowed to reach maturity". This is simply not the case and is therefore misleading. The replacement trees were specifically chosen so that they would NOT grow as large as those which were replaced, so it is not expected that the site would look the same as it did prior.

In addition, any previous history concerning the trees on site has been resolved and not considered material to the application being considered here, these issues have been dealt with through the correct channels and regardless of personal grievances, they have been resolved.

With regards to the assertion of a the TPO not being mentioned this is again erroneous. Firstly, BS5837 does not make any differentiations to the statutory protection afforded to trees and to the trees that should be surveyed. The Planning Act does narrate that tree regardless of statutory protection should be a material consideration to any determination of a planning application.

Secondly, the regulations that are fundamental to the making of a tree preservation order make it clear that they should not be used as a tool for the control of development but for the protection of the character and amenity of the area. The term 'amenity' is used universally but not specifically defined in planning legislation and is therefore subjective. It is therefore for authorities to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order, they should be able to show that protection would bring a reasonable degree of public benefit in the present or future." As no trees at all

are to be removed as part of this proposal and every effort has been made to mitigate any harm to existing trees, to argue that 'amenity' will be harmed is not a relevant argument. It is not supported by LDP Policy or the Edinburgh Design Guidance.

The arguments with regards to the planning policy Env12 are not in context, it is a matter for the future, the trees that are extant on the site are newly planted and offer little in the way of amenity toward the character of the area.

It is quite unprofessional to have stated that the applicant "disingenuously instructed a tree expert..." Graham Hinshelwood put the TPOs on the trees or at least managed them throughout the time that the old trees were being removed, therefore he should know that the trees being looked at on site were subject to TPO's. The reason that recently planted trees were not identified within the body of the report is that the guidelines as set for carrying out BS5837 surveys as stated within the Edinburgh Design Guidance were followed to the letter when the survey was compiled. That is only trees with a diameter of 75mm or over should be included within the survey. The trees that have been recently planted do not meet these criteria as requested by the LPA so were not include

The scheme as developed by the architect now allows for a generous amenity strip between the boundary wall and the proposed extension. However, this is the sole reason that the scheme was refused in that the council do not deem this area sufficient for the establishment of trees. The space granted will be adequate for the establishment of a shelterbelt of trees to repair the injury and increase the quality of the character and amenity of the streetscape. The correct choice of species will aid in this expectation, and as can be seen by the very recent redevelopment of Raeburn Place even very large veteran trees will survive redevelopment if the works are carefully scheduled.

The fear that all of the trees will be lost due to the pressure of lifestyle is again redundant. The council will have the power to refuse or dismiss any application for tree works at the property so allowing for a sustainable landscape to be created. A planting scheme could be made a condition of any positive determination, for example. In addition, a planning decision cannot be made on this proposal that considers any future speculative works required to the property or its' surroundings, each application must be determined on its own merits.

In addressing comments made with regards to failing to comply with previous notices to replace trees, this is not true as all 13 trees have indeed been replanted and done so by the applicant himself who has a tree planting business and is proficient in such matters.

On a final note, it should be said that the arboricultural work that was undertaken by Mr Julian Morris in response to our applicants' appeal, was done so without a thorough site visit as there was no request made to enter the applicants' property. In addition, despite this additional work, there has still not been any technical work undertaken by the council as a basis for their refusal and their reason for refusal remains un-evidenced. No qualitative assessment has been carried out by the council of the site, the specific site characteristics or that the design of the proposed developed has evolved in line with advice received by the council to take careful account of all constraints and opportunities on site. On this basis, it appears that the council are using the TPO's on site as a tool to prohibit development which contravenes their very purpose.

1.3 Representations made by residents of 3 Avenue Villas

- We believe the site is too small for the proposed development. This is a listed building of three bedrooms which is to be turned into a house with 2 sitting rooms, a study, a plant room and a utility area (including a large basement area) as well as the existing 3 bedrooms. Is this size in keeping with the existing building? We believe it is the existing building which provides the scope to increase the size so does this set a precedent that large basement extensions are acceptable?*

Our response:

Matters pertaining to the size and design of the proposal and certainly whether the proposals are 'in keeping' with the listed building have already been considered and subsequently accepted in the approval of the Listed building consent application. In addition, the only refusal reason for this application, relates to trees and any other matters should be considered resolved within the planning process.

In addition, in the report of handling, it was concluded that:

“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. 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.”

- *In the last submission we were advised that a specialist flood report would be made available. As yet we have not seen any flood report and feel that this is a crucial piece of information given that this area has been known historically to be susceptible to flooding. Where is this report?*

Our response:

The Flood Risk Assessment was submitted as part of the planning application documents.

- *Tree Preservation Order No 157 – when we moved into Avenue Villas there was a mature and thriving canopy of trees which gave coverage and protection enjoyed by 1, 2 and 3 Avenue Villas. You can see the woodland on the Google Maps print out. Many of the trees have subsequently been damaged and now replaced under an enforcement order but our concern is that these trees will not be retained and could be harmed during a construction process of this scale or materially impact their growth. Given that a significant loss to the natural tree group on the site has already been undertaken with the damage to and then removal of some of the previous trees without permission we are concerned that the building works will be very close to the re-planted trees on the plans especially as a vast basement is proposed. It is clear from the Google map image that there is simply not enough room to accommodate the protected trees and the proposed development on the site. We understand that the TPO is intended to protect the trees from damage. Clearly to allow the proposed development to proceed will result in damage to some of the protected trees (if not all).*

Our response:

Due to the size and location, and indeed the type of trees that were replanted, it is unlikely that the proposals would impact upon the long-term growth of the TPO Trees. The Applicant has adapted the proposed design several times in order to avoid any impact on these trees and it is considered that the mitigation measures that have been proposed will be sufficient in ensuring that these trees aren't harmed. The replanted trees are a different species to those originally removed and in fact, aren't designed to grow as big as those which were there previously. It is therefore considered that the site can comfortably accommodate the proposals whilst protecting the longevity of the valuable trees and vegetation on site.

- *Foundations – as the proposed works include large basement adjoining a listed building careful judgement is needed to ensure that construction works do not affect the existing buildings of the neighbouring properties. Could earthworks affect the structure of the existing building and the neighbouring properties? Again, we have seen nothing in the application to provide us with any comfort that structural damage is not a risk.*

Our response:

The proposed works, including the basement would be constructed by a certified contractor who would use technical knowledge and experience to ensure that construction works do not affect the existing listed building or neighbouring properties.

- *The applicant has already failed to comply with a planning condition attached to a previous listed building consent concerning the creation of a new entry. In particular, the failure to comply with planning condition to put a sliding gate in place.*

Our response:

This is a matter ongoing which is separate to this planning application entirely and indeed, no such planning contravention has taken place.

- *In the previous Planning Application, we were told that an Arboriculture Impact Assessment and Tree Survey would be provided whilst I appreciate that it is not uncommon for additional surveys to be uploaded during the consultation process this report did not arrive in time. The first time we received sight of this report was when we were notified that the appeal had been made. Having now read the report, it is clear that it does not consider all the trees which are protected by the TPO*

Our response:

The reason that recently planted trees were not identified within the Arboriculture Impact Assessment submitted as part of the planning application is that the guidelines set out in BS5837 and as stated within the Edinburgh Design Guidance were followed to the letter when the survey was carried out. That is only trees with a diameter of 75mm or above should be included within the survey. The trees that have been recently planted do not meet these criteria as requested by the LPA so were not included.

- *The applicant has previously caused damage to the protected trees and failed to comply with an order to replant them. We don't think it is fair to allow the applicant to benefit from these wrongs in his current application.*

Our response:

No such activities have occurred, the replacement trees were, in fact replanted. This matter again is not material to the planning application put forward.

1.4 Conclusion

The proposed development, which is the subject of the Local Review Body submission, comprises the demolition of an existing rear extension to the side and rear of the house, the creation of new living, dining and utility facilities and the formation of abasement which will include a study and plant room in addition to minor internal remodelling and an Apex roof light at 1 Avenue Villas, Edinburgh. Under normal circumstances it is an uncontroversial application.

It is considered that the proposed extension to the building will make a positive contribution to the character and setting of the building and will enable the occupants to adapt the existing home to their changing needs. Listed Building Consent has been granted.

In addressing the representations made in response to our appeal, it is clear that personal grievances with the applicant are the reason for repeated attempts to object to the application and now to the appeal and this was made clear from a recent interaction with the applicant and neighbouring residents. We therefore would like to take this opportunity to repeat that previous planning decisions, prior conduct and personal grievances with the applicant are not material to the application before the PLRB.

We would like to take this opportunity to make abundantly clear that the proposed extension would not have a detrimental impact upon TPO trees on the site. Despite speculative statements and examples provided by Julian Morris,

no actual evidence has been provided that demonstrates that the proposal would have a detrimental impact upon the trees and this is because it simply cannot be demonstrated. The 'perceived' impact in question here is not an impact at present, it's a matter for the future. In Planning Law, material considerations are those which can be considered at the time of the application and any future circumstances cannot be guaranteed or quantitatively measured and therefore cannot be considered within the assessment.

The only reason for refusal in this case, is the perceived impact upon the longevity of TPO trees. In considering that the officer has not even assessed this impact quantitatively, or that no trees are proposed to be removed as part of the proposal or that every effort has been taken to mitigate any future harm to the trees within the proposal, it respectfully requested that the appeal be allowed.

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