

**Application Reference 22/02294/FUL For “Erect 6x dwellings”
Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh
Objection on Behalf of Mr and Mrs C Hardy
Appeal - Local Review Body**

Felsham Planning & Development (FPD) is instructed by Mr and Mrs C Hardy, owners of Gogar Castle to submit an objection in respect of the above application for 6 new dwellings at land adjacent to Castle Gogar Rigg, Edinburgh.

We are aware that the applicant has appealed the refusal of 4 August 2022. The Reasons for Refusal being:-

1. The proposals do not comply with LDP policy Env 3 Listed Buildings- Setting and Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it is likely to impact on the setting of the listed building.
2. The proposals do not comply with LDP Hou 1 Housing Development and Emp 6 International Business Gateway as it is not part of a business-led mixed-use proposal, nor does it meet any of the other use criteria defined under LDP policy Emp 6.
3. Insufficient evidence has been provided to show that the proposal complies with LDP policy Env 12 Trees.
4. Insufficient evidence has been provided to show that the proposal complies with LDP policy Env 16 Species Protection.
5. The proposals do not comply with LDP Policy Des 3 Development Design - Incorporating and Enhancing Existing and Potential Features and Des 4 Development Design - Impact on Setting as it impact on the setting of the existing new build houses and surrounding area.
6. The proposals do not comply with Env 18 Open Space Protection as the granting of proposed dwellings within the "paddock" area would result in the loss of open space .

The applicant has submitted the following documents to support the appeal:

1. Review Statement; and
2. Design Statement.

The Design Statement is a new document not previously submitted with the application. Applicants should avoid raising any new material which was not before the Case Officer at the time the application was decided. New material should not be permitted unless the Local Review Body is satisfied:-

- ♣ that the new material could not have been raised before the decision was taken or the time for the decision ran out, or
- ♣ that it was not raised before that time as a consequence of “exceptional circumstances”.

There are no exceptional circumstances stated for the omission of the Design Statement from the original application and the Design Statement should not be presented to the Local Review Body.

If the Local Review Body only choose to review the Council’s Report of Handling, we are concerned at the Summary of the Representations on page 12 of the Report does not fully represent the extent of the arguments against the proposals. We therefore outline below the objections to the application and the full objection submitted in May 2022 in Annex 1.

Our clients strongly object to the application for the following reasons:

1. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority 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. The applicant has not demonstrated that this special regard should be dismissed or that there will not be an impact on the Category A Listed Building (Castle, Stables, Bridge etc) structures or their setting.
2. The Gogar Rigg, the bridge and the approach to Category A listed Gogar Castle is part of the listing and fundamental to the character and setting of the Castle.
3. The Scottish definition of a rig is a furrow or field. The address of this application is Castle Gogar Rig. This is the field surrounding Gogar Castle and this description confirms the historic intention that this is supposed to be open land surrounding and serving the Castle not land to be built on.
4. The applicant has not demonstrated why there is a need to override planning policy and allow detrimental development within the settling of a Category A listed building and its structures.
5. Failure to accord with policy – there is a presumption against development that will impact the character and settling of a listed building.
6. The aims and objectives of the LDP policy are clear - these proposals are contrary to these aims and objectives, for the reasons set out above..
7. The proposal is contrary to Historic Environment Scotland Managing Change in the Historic Environment Guidance Note on setting as the proposed new houses would detrimentally impact the approach and wider setting of Category A listed Castle Gogar.
8. There will be a detrimental impact on the ecology and wildlife of the area.

The Review Statement has not addressed any of these issues and the application should be refused.

There is no overriding need for 6 new dwellings in this location that justifies setting aside the protection of the character and setting of a Category A Listed Building.

Having regard to the above and our full objection (Annex 1), we respectfully request that the application be refused.

Annex 1

Application Reference 22/02294/FUL For “Erect 6x dwellings” Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh Objection on Behalf of Mr and Mrs C Hardy May 2022

1.0 Introduction

Felsham Planning & Development (FPD) is instructed by Mr and Mrs C Hardy, owners of Gogar Castle to submit an objection in respect of the above application for 6 new dwellings at land adjacent to Castle Gogar Rigg, Edinburgh.

This objection raises the following concerns:

1. Planning policy
2. Impact on the character and setting of Castle Gogar, an A Listed Building;
3. Loss of open space and impact on important recreation resource
4. Impact on ecology and wildlife
5. Access Impact.

2.0 Basis for Determining a Planning Application

Section 25 of the Town & Country Planning (Scotland) Act 1997 states:

‘Where in making any determination under the Planning Act, regard is to be had to the Development Plan that determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise’.

Section 37 should be read alongside Section 25. Section 37 (2) states:

‘In dealing with an application, the Planning Authority shall have regard to the provisions of the Development Plan so far as material to the application and to any other material considerations’.

The House of Lords in its judgement in the City of Edinburgh Council v Secretary of State for Scotland case 1998 (SLT120) ruled that if a proposal accords with the Development Plan and no other material considerations indicate that it should be refused, planning permission should be granted. It ruled that:

‘Although priority must be given to the Development Plan in determining a planning application, there is built in flexibility depending on the facts and circumstances of each case.’

The judgement set out the following approach to determining a planning application:

1. Identify any provisions of the Development Plan that are relevant to the decision.
2. Consider them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies.
3. Consider whether or not the proposal accords with the Development Plan.
4. Identify and consider relevant material considerations for and against the proposal.
5. Assess whether these considerations warrant a departure from the Development Plan.

This judgement sets out a clear and methodical approach to determining a planning application and clarifies how the development plan should be used.

The determining authority must first consider whether the proposal accords with the development plan. It is important to consider not only the detailed wording of policy, but the aims and objectives of the policy maker. If a proposal is considered to accord with the development plan, it follows that consent should be granted unless any site specific matters preclude consent.

SPP has further clarified this point. Paragraph 8 sets out the “core principles” which should underpin the “modernised system.” The third core principle states:

‘Confidence in the planning system needs to be reinforced through the efficient and predictable preparation of plans and handling of applications; transparency in decision making and reliable enforcement of the law and planning decisions.’

The House of Lords has ruled that material considerations must satisfy two tests:

1. They must be planning considerations, in other words, they must have consequences for the use and development of land or the character of the use of the land; and
2. They must be material to the circumstances of the case and they must relate to the proposed development.

There may be circumstances where the achievement of one policy objective, such as delivery of a site identified in the housing land supply requires another policy to be waived or reduced in impact.

In assessing this proposal we believe that it is also relevant to refer to the Tesco Stores v. Dundee [2012] PTSR 983.

Paragraph 18 of the Dundee decision states:

The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by the planning authority in its decision making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and the planning authority....the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, whilst allowing a measure of flexibility to be retained.

Paragraph 19 continues:

The development plan should be interpreted objectively in accordance with the language used...that is not to say that such statements should be construed as if they are statutory or contractual provisions. Although a development plan has a legal status and legal effects it is not analogous in its nature or purpose to a statute or contract...development plans are full of broad statements of policy many of which may be mutually irreconcilable, so that in a particular case one must give way to another...many of the provisions of the development plan are framed in language whose application to a given set of facts requires the exercise of judgement. Such matters fall within the jurisdiction of planning authorities.

The Court ruled that the interpretation of planning policy is a matter of law but the application of planning policy is a matter of planning judgment, therefore provided the planning authority demonstrates a proper understanding of policy in its reasoning it can proceed as it sees fit and weigh one policy against another and/or give weight to factors other than policy in its determination.

This decision adds weight to the argument that the aims and objectives of the development plan need to be properly assessed. If they show a specific requirement for a particular form of development that is demonstrably not met it provides the basis to argue that material considerations should overcome any policy or prematurity argument. This means that sites may be able to come forward through planning applications in advance of receiving a development plan allocation or where there is a potential policy objection.

The key is that the Courts have confirmed that the development plan provides the planning authority with discretionary powers and these can be used flexibly. It is not sufficient to conclude that in the planning authority's view the proposal does not comply with elements of policy. Instead the Courts require the 5 step procedure set out in the 1998 City of Edinburgh Council House of Lords case to be followed. The planning authority must take a view on a case by case basis with the development plan the starting point for its assessment but not the concluding point. It may be the case that a policy intended to apply across the Local Plan area is clearly not applicable to specific circumstances of a particular site.

3.0 Assessment of the Planning Application

The Edinburgh Local Development Plan (LDP) was adopted in November 2016 and is the relevant development plan.

Planning Policy

The proposal is contrary to :-

- Adopted Edinburgh LDP policy Hou 1, Emp 6, Des 4, Env 3, Env 12, Env 16, Env 18, Env 21.
- the Historic Environment Scotland Managing Change in the Historic Environment Guidance Note on setting; and

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Section 59, requires that a proposal should preserve the setting of a listed building and as such the application also fails to meet these requirements.

The tree lined avenue (Castle Gogar Rigg) leading to the Category A listed Gogar Castle is impressive and an expected route of grandeur to the historic structure and its setting. An existing avenue, with mature trees and views of the surrounding open rolling landscape through the trees provides an important and significant setting for Gogar Castle. It is intended that the Castle will be framed by the tree lined avenue and that the approach will be one of awe and grandeur. This will be diminished with buildings placed within this supposedly uninterrupted view. This will undermine the setting of the listed building.

The Tree Survey Report submitted in support of this application states:-

7.2.1 ... this well-structured formal avenue constitutes an important historical and landscape feature. See Image No 01, below...

7.2.5 ... the avenue as a whole should be regarded as being of Category A significance in terms of historic and landscape values.

It is clear that the applicant's consultants consider the settling the Gogar Castle Rigg avenue provides to the Category A Listed Building to be an historically important feature with the highest level of significance both historically and in landscape terms.

The application proposes boundary walls and new modern Mediterranean style design dwellings which are in complete contrast to the historic nature of the Castle Gogar Rigg and the listed bridge at the edge of the application boundary. With the addition of the future development of the International Business Gateway

proposals further afield it is of vital importance that this significant location setting is preserved to retain the character of the area.

The proposal does not comply with policy Hou 1 or Emp 6 as the site is located within the area identified for the development of an International Business Gateway (IBG) within the LDP and is identified in NPF3.

Policies Emp 6 and Hou 1 do permit housing development but this is to be of a business led mixed use proposal. The proposed development is solely for housing development and not part of a mixed-use proposal. the proposal does not comply with any of the other use criteria defined under policy Emp 6. It is therefore contrary to both policies Emp 6 and Hou 1.

Policy Env 3 states that development within the curtilage or affecting the setting of a listed building will be permitted only if it is not detrimental to the architectural character, appearance or historic interest of the building, or to its setting. The application proposals are in complete contrast to the architectural character, appearance, historical interest and setting of the Category A listed building and the elements contained within the listing. There are no ties or architectural references to the style and design of the existing historical buildings but also the style does not provide new structures/buildings that have a presence or are impressive enough to enhance the route to the Castle giving a feeling of grandeur appropriate to the location.

Policy Des 4 states that planning permission will be granted for development where it is demonstrated that it will have a positive impact upon its surroundings, including the character of the wider townscape and landscape and impact upon existing views. The proposals would have a significant detrimental impact on the setting and historical significance of Category A listed Castle Gogar (and the stable cottages contained within its listing). The views from and to the listed Castle Gogar Rigg bridge and Stables would be impacted by the new dwellings and boundary walls. The character of the area would also be fundamentally impacted and changed by enclosing the views from the Castle Gogar Rigg from the wider setting of the existing structures and the surrounding landscape.

The proposed houses and walled boundary to be located within the existing paddock ground would significantly impact upon the setting of the A listed castle as they would then be the dominant features, not the tree lined structured avenue approach. The proposed dwelling to be sited within the existing "village green" would also be detrimental to the setting of the castle and the nearby stable buildings (A listed). The formation of a large dwelling, in front of the stables would be detrimental to its setting.

The tram development has created new view points into the site and of the wider context of the site. The proposed houses would be screened to a degree by the trees on the site, the housing proposed on the paddock area and Plots 1 – 3 especially, will be visible from the tram.

The proposal will be detrimental to the setting of the castle, its associated buildings and to the wider estate and therefore the proposal does not comply with LDP policy Env 3, Des 4 and the HES Guidance on Managing Change in the Historic Environment on setting.

LDP policy Env 18 states that proposals involving the loss of open space will not be permitted unless it is demonstrated that:

- a) there will be no significant impact on the quality or character of the local environment;
- b) the open space is a small part of a larger area or of limited amenity or leisure value and there is a significant over-provision of open space serving the immediate area; and
- c) the loss would not be detrimental to the wider network including its continuity or biodiversity value.

As mentioned above, there will be impact on the quality and character of the local environment by the building of new dwellings on the existing open space. The character of the area will be fundamentally changed and that character is essential in the context of the Category A Listed Building which should be afforded the highest level of protection.

The open space that will remain will be limited and compromise the overall provision of the existing grouping of houses. The amenity value will also be diminished by the loss in the context of the amenity value of the tree lined avenue.

Paragraph 194 of the LDP states

The Council will only support development on open space in exceptional circumstances, where the loss would not result in detriment to the overall network and to open space provision in the locality

The applicant has not demonstrated that there are exceptional circumstances to justify a departure from the development plan and its policies. The historic level of development within the wider site and subsequent need for this area of open space to remain has now increased over the years due to the development to the west and south west of the Castle.

The granting of planning permission for a new dwelling on this green space and the dwellings within the "paddock" area would be contrary to LDP policy Env 18. The proposal does not comply with policy Env 18.

Policy Env 12 states that development will not be permitted if likely to have a damaging impact upon a tree protected by a Tree Preservation Order or on any other tree or woodland worthy of retention unless necessary for good arboricultural reasons.

The Tree Survey Report submitted in support of this application states:-

7.2.1 Comprising substantial mature examples of Sycamore, Lime, Horse Chestnut, Norway Maple, Ash and Beech, this well-structured formal avenue constitutes an important historical and landscape feature. See Image No 01, below...

7.2.5 This unfortunate history is reflected in the reduction in the anticipated Safe, Useful Life Expectancy (SULE) of many important trees, and in their being graded variously at BS5837 Retention Category A, B or C. However the avenue as a whole should be regarded as being of Category A significance in terms of historic and landscape values.

The objector agrees with the applicant's consultant that **“,this well-structured formal avenue constitutes an important historical and landscape feature.”** and that ... *the avenue as a whole should be regarded as being of Category A significance in terms of historic and landscape values.*

(Note: our emphasis in bold)

The Tree Survey only identifies 2 trees that require removal, both of which appear (from Tree Survey - dwg:- BS_050121_R1, page 13) to be located on the opposite side of Castle Gogar Rigg to the application site and therefore outwith the application boundary.

The site has many large mature trees worthy of retention. It appears that those which are located along the south side of the long entrance to the site will be incorporated into the garden ground of Plots 1 – 3 and that a substantial (unbroken/uninterrupted along its length) wall with vehicle access to the Plots will be incorporated. It is noted that the dwelling houses (Plot 4-6) proposed within the paddock area will also be sited within close proximity of mature trees on their southern boundary.

Mature trees should be protected and there should be no loss. The presence of mature trees along the edges of the existing private access makes development difficult to achieve because of damage to tree roots. The proposed wall and vehicle access to the plots will impact on the root protection area of these mature trees.

The incorporation of the trees into the garden ground of the plots also reduces the amenity of the area and potentially removes the uniform protection /maintenance of the trees and puts it into private ownership of each dwelling owner. The recognised (Tree Survey para 7.2.1) *well-structured formal avenue constitutes an important historical and landscape feature* will be destroyed.

The Tree Survey Report submitted in support of this application notes that there is a “*programme of felling and tree surgery required*”. Relying on a private householder to undertake ongoing tree maintenance and specialist tree surgery over the lifespan of these significant mature trees, potentially puts the mature trees in danger.

The applicant has not identified which trees will require removal to facilitate the proposal and trees that will have their root protection area compromised by ground works to create foundations for the structures, walls and access.

The application is contrary to Policy ENV12.

Policy Des 4 states that planning permission will be granted for development where it is demonstrated that it will have a positive impact upon its surroundings, having regard to height and form, scale and proportions, position of buildings and materials and detailing.

Policy Des 5 states planning permission will be granted for development where it is demonstrated that the amenity of neighbours will not be adversely affected and that future occupiers will have acceptable levels of amenity in relation to noise, daylight, privacy and immediate outlook.

The proposed buildings are modern and are large in scale. The detailing is simple and Mediterranean in style. The proposed position of the buildings would also negatively impact upon its surroundings, including the character of the wider landscape. The massing of the structures and the boundary walls will negatively dominate the tree lined avenue and are of an inappropriate location and scale. The proposal does not comply with LDP policy Des 4.

Policy Env 21 states that planning permission will not be granted for development that would increase a flood risk or be at risk of flooding itself.

The site falls within the 1 in 200-year fluvial flood event zone, is located near to the Gogar Burn and the southern part of the Paddock area just falls within an Area of Importance for Flood Management. This is also shown on the Scottish Environment Protection Agency (SEPA) online flood mapping plans. The applicant should be required to provide a flood risk assessment (FRA) to demonstrate that all of the dwellings are located outwith the functional floodplain, in line with Scottish Planning Policy.

The applicant has not prepared an FRA and therefore the application is contrary to this policy.

Impact on ecology and wildlife

The proposals incorporate the mature trees lining the southern side of the Castle Gogar Rigg and the corresponding open grassland into the garden ground of the proposed dwellings. There is also a new garden wall that stretches along the complete boundary of the properties from the existing listed bridge to (just before) the entrance to the Castle. This provides an impenetrable boundary for the wildlife in the area when transitioning between the habitats of the area. The natural evolution of the trees will be impacted by being incorporated into the dwellings garden ground, again reducing the available habitat and

also potentially disturbing the existing habitat due to the proximity to the noise, lighting and environment of a properties garden.

The following construction elements will also have an impact on the ecology, wildlife, mature trees and habitat of the area:-

- The existing rising main (as shown on the application drawings) may need to be relocated;
- the foundations of the new dwellings;
- footings of the new boundary walls, and
- new vehicles access to each property.

These building elements will all have a resultant detrimental impact on the root protection areas of the existing mature trees, the trees themselves and the habitat in the area.

The Protected Species Survey undertaken in support of the application was not undertaken at the optimal time of year to establish the presence or absence of badgers, water vole or Great Crested Newts.

The proposal will have a detrimental impact on the ecology and wildlife in the area and its habitat. It is therefore contrary to the LDP policy.

Access

The access road (The Avenue) is in a serious state of disrepair. The applicant has the responsibility to maintain this asset. There are no proposals in place to rectify this situation and to restore the Avenue to a standard consistent with what will potentially become another multi-million pound development.

4.0 Summary

We have assessed the application using the House of Lords' methodology for determining a planning application:

Identify any provisions of the Development Plan that are relevant to the decision. – the relevant policies cover design, the historic environment, landscape and recreation and flooding.

Consider them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies. – the aims and objectives of development plan policy are clear that this land fulfils an important landscape and historic function and an important function in the transition to a Category A Listed Building.

Consider whether or not the proposal accords with the Development Plan. – the proposal clearly does not conform to development plan policy.

Identify and consider relevant material considerations for and against the proposal. – there are no material considerations that can overcome the substantial policy objections.

Assess whether these considerations warrant a departure from the Development Plan. – there is no justification for a departure from the development plan.

5.0 Conclusions

Based on this assessment our clients strongly object to the application for the following reasons:

9. The applicant has not demonstrated why there is a need to override planning policy and allow detrimental development within the settling of a Category A listed building and its structures.

10. Failure to accord with policy – there is a presumption against development that will impact the character and setting of a listed building.
11. The aims and objectives of the LDP policy are clear - these proposals are contrary to these aims and objectives, for the reasons set out above. The question is whether the need for the proposed development creates very special circumstances that allow policy to be overridden.
12. The proposal is contrary to Historic Environment Scotland Managing Change in the Historic Environment Guidance Note on setting as the proposed new houses would detrimentally impact the approach and wider setting of Category A listed Castle Gogar.
13. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority 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. The applicant has not demonstrated that this special regard should be dismissed or that there will not be an impact on the Category A Listed Building (Castle, Stables, Bridge etc) structures or their setting.
14. There will be a detrimental impact on the ecology and wildlife of the area.

There is no overriding need for 6 new dwellings in this location that justifies setting aside the protection of the character and setting of a Category A Listed Building.

Having regard to the above, we respectfully request that the application be refused.

JM PLANNING SERVICES

My Ref. MMSG/CGRE/Obj/85/2 – LRB/2
Your Ref. 22/00164/REVREF

Local Review Body
Committee Services,
Strategy and Insight,
Chief Executive
Waverley Court,
Business Centre 2.1,
4 East Market Street,
Edinburgh
EH8 8BG,

21st November 2022

For the Attention of Gina Bellhouse, Planning Adviser to Local Review Body

Dear Ms Bellhouse,

Notice of Review for Refusal of Application Ref. 22/02294/FUL

Erection of 6 Dwellings at Castle Gogar Rigg, Edinburgh

I refer to the above and to your notification letter dated 7^h November 2022 in which you invited further written submissions to be made within 14 days from that date.

This letter contains those further written submissions on behalf of my clients, Mr Malcolm Mills and Ms Sheevaun Gallagher, who own the property No. 3 Castle Gogar Rigg, Edinburgh, within the required deadline for comments.

1. Objections to Planning Application Reference 22/02294/FUL

I wish to confirm that the objections submitted in response to the planning application by my clients in the letter dated 15th June 2022 remain relevant and they respectfully request that those objections be taken into consideration as part of the Review.

My clients also fully **support** the Council Planner's decision to refuse the planning application for the 6 reasons stated in the decision letter dated 4th August 2022, most of which reflect the terms of their own objections.

In addition to those objections and in response to the Review itself, my clients would wish to raise the following points which represent further objections to the proposals for the members of the LRB to consider. It is appreciated that some of the points being raised repeat those previously made on several occasions now in respect of this proposal (Application Ref. 22/02294/FUL) and similar rejected proposals (Application Ref. 19/04849/FUL (refused) and its subsequent Review, with the Planner's decision being upheld) for the land outlying the established and clearly defined gated community at Castle Gogar Rigg. However, they make no apology for doing so as they feel it is necessary in order that their concerns are fully understood by the LRB.

2. Additional Information Submitted by the Applicant for the Review Case

At the outset, it is noted that the Review contains material that did not form part of the planning application (Ref. 22/02294/FUL) under consideration, including an Addendum to a Design and Access Statement. (It is understood that a Design and Access Statement was submitted to the Council according to the planning application form, but there is no trace of the Statement listed in the Documents tab on the Council's website).

My clients are aware that it will be a matter for the LRB to determine whether this Addendum can be accepted or not as part of the consideration of the Review as it represents new information. However, my clients would question how this information was not submitted with the initial application if it was so central to the justification being presented on the design matters for the proposed houses, as in the way it appears to have been presented. This implies that the justification on design in particular has been reactionary to the reasons for refusal, now on 2 occasions, rather than addressing the issues comprehensively from the outset.

Nevertheless, in my client's view, it demonstrates that the applicant is prepared to go to great lengths and cost in seeking to justify a development proposal on the land outwith Castle Gogar Rigg at the 4th attempt when all other proposals have been rejected based on the unsuitability of the development at the location in principle and on other various grounds. In my client's view, the costs for these assessments might have been better directed towards the effective maintenance of the trees lining the avenue leading to the land in question, which the applicant's own tree consultant confirms are valuable specimens, worthy of retention and in need of remedial work after being neglected for a considerable period of time.

3. Supplementary Points to Some of the Original Objections

3.1 The description of the land

My clients wish to direct the LRB to the objections as stated in Section 2.3 of their letter dated 15th June 2022 which are of relevance and remain valid.

To supplement what is already stated in the letter, it is important for my clients to reiterate their concerns that the applicant refers to the site as being vacant land rather than a paddock which used to exist. When my clients moved into their property at Castle Gogar Rigg in 2014, the land in question was set up as a paddock - fenced, gated with mature and recently planted trees. It was well presented, with the grass being regularly maintained. Many of the trees have been removed and my clients believe that the developer has deliberately set out to degrade its appearance in order that it can be described as vacant to suit the cause for it being developed. There are assorted temporary structures, fencing, materials and equipment which my clients feel serve no purpose other than to reduce the appearance of the site.

The enforcement complaint raised by my clients earlier in the year was submitted to ask the Council to investigate the potential unauthorised use of the land but the developer's actions to degrade the land has had the desired effect as the Enforcement investigation has concluded that the land is now deemed to be a site a compound lying adjacent to and used in connection with the construction work associated with the unfinished building work within the gated community area. The unsightly nature of the site is in vast contrast to the grass meadow that previously existed. Nevertheless, the degraded condition of the land does not in itself justify it being used for development, contrary to what the applicant appears to believe.

Clearly, therefore, my clients do not share the applicant's description of the land as being vacant, whether in the past or currently.

3.2 Adverse Impact on the Category A Listed Building - Castle Gogar

My clients wish to direct the LRB to the objections as stated in Section 2.3 of their letter dated 15th June 2022 from the paragraph commencing "Thirdly", which are of relevance and remain valid.

My clients remain concerned that the applicant's unapologetic justification for continued development close to Castle Gogar, which they believe further compromises the Castle, is on the basis that the previous development has already had a lasting negative impact. This is a self-fulfilling prophecy, but it still avoids the issue that further potential heritage impact is a valid concern and that the proposed development requires to be justified in its own right in that regard. The Council's detailed assessment of the impact on the Category A Listed Castle Gogar is fully supported by my clients and hence the proposals, yet again, fall well short of being justified in terms of the adverse impact the proposed houses would have on this valuable heritage asset, and therefore further eroding the setting of the listed building to an unacceptable degree.

The following is an extract from the objection letter dated 15th June 2022 for ease of reference for the LRB.

"My clients raised a specific objection on the potential heritage impact of further development at the time of the last application and the following is an extract from that objection:-

"The conclusion of the assessment (paragraph 6.7) appears to struggle with the suitability of the development, admitting that it would have a detrimental impact on the setting of the Category A Listed Castle and the Bridge. The mitigation used to allow the development to be considered in a more favourable light appears apologetic and the detrimental impact of past development should not be used to excuse further unacceptable and inappropriately sited additional development at this location." "

3.3 Development Outwith the Established and Self-Contained Gated Community

My clients wish to direct the LRB to the objections as stated in Section 2.1 of their letter dated 15th June 2022 which are of relevance and remain valid.

By way of supplementing what is already clearly stated within the objection letter relative to this matter, it is worth reiterating that the proposals for 6 new houses will introduce further new development on land **outwith** the existing well-defined boundaries of Castle Gogar Rigg (as defined by the walls, fences and gates). The proposals do not complete an unfinished development and for the applicant to suggest otherwise is not only unjustified but also misleading. Only the level of development **within** the gated community was necessary as enabling development to fund the renovation of Castle Gogar, with some additional changes to house types allowed thereafter on the basis that they were still within the confines of the gated community area previously allowed to be developed.

Furthermore, and importantly, my clients believe that the applicant's understanding of context is skewed greatly by the perception that this is the final piece of developable land in his ownership.

3.4 Adverse Impact of the Development on Existing Trees

It is of note that the developer's own Tree Report highlights the mismanagement of the tree line and canopy. My clients are of the opinion that the developer has had many years to address this, but maintenance of the trees has either been ignored or conveniently forgotten about. Hence the trees are afforded less importance which supports the developer's position that the land containing the trees is suitable instead for development. The significant and positive attributes of the trees forming the tree lined avenue and their contribution to the approach to and setting of the Category A Castle Gogar, which is acknowledged by the applicant's own tree consultant, has been completely ignored as part of these (and all previous) development proposals. The proposals still fall well short in terms of seeking to address the potential adverse impact the houses would have on the existing trees and my clients believe that this is because the site has not been able to nor is able to be justified as suitable in principle for development.

3.5 Other Considerations Deemed Worthy of Comment

(i) Office permission

There is permission for an office building on the central area within the gated community which has never been implemented.

The applicant has mentioned in the Review Statement that the office permission would be removed (revoked). My clients previously understood that this had already been removed as part of the agreement for the additional apartments consented within the gated community site but on further research of the planning history as part of the proposals for the current land in question, it was determined that it had been mooted but never formalised (which would have been by way of a revocation).

The LRB's attention is drawn to my client's previous objection in the letter dated 15th June 2022 which states:-

"Although it is understood that the consent for the office development appears to remain extant according to the information obtained from the Council's planning portal, my clients are of the opinion that the opportunity to revisit developing the site for the office has since been lost by the developer's subsequent consents for additional housing elsewhere in place of the office building. There was and still is a strong expectation by residents for this area to become a village green."

My clients are surprised by the applicant's suggestion that the proposed development can be made more acceptable by revocation of the office consent to allow the proposed housing. This implies a trade-off and are effectively asking the LRB to choose one over the other. My clients maintain that the proposed housing at this location cannot be justified, as in the past, and they hope that the LRB will not be persuaded by the applicant's apparent desperate attempt to convince the Council that the proposed housing has any merit and that the LRB will again support the Planner's robust planning reasons for refusing the application.

(ii) The listed bridge leading to Castle Gogar

My clients wish to present a contrary view to that of the applicant. Not for the first time the developer has tried to claim publicly, as part of proposals for this location, that he was solely responsible for the repairs undertaken in the past to the bridge. My clients wish to reaffirm that a number of the original house owners at Castle Gogar Rigg also contributed to the repairs to this bridge. They feel strongly on this issue and it is both disingenuous and misleading for the developer to claim otherwise.

The extract below is from my client's objection letter dated 15th June 2022 and which references the same erroneous claim by the applicant previously in connection with the Review for the 2019 application:-

"The applicant's claim that the repairs to the bridge were solely self-funded is factually incorrect. The repairs were shared amongst the residents in the Castle Gogar Rigg community. My clients can testify to this based on the payment they made directly to the applicant following his request for an equal contribution by all residents. Other residents will be able to confirm this too. The contributions were sought even although, at the time, the bridge was being used constantly for a sustained period by heavy goods vehicles in the construction of the previously consented development at Castle Gogar Rigg.

It is disingenuous for the applicant to state that he funded these repairs himself. While it is not regarded as a planning matter, the erroneous claim is being made publicly in the applicant's document to support their current application. It was also included in the same applicant's Notice of Review request for a review of the decision of the last unsuccessful 2019 application. My clients brought it to the attention of the LRB and they are disappointed that it has again been raised publicly in this manner. Consequently, they feel it is important again that this matter should be brought to the attention of, this time the Case Officer, in order that a more accurate account and better understanding of this specific point is obtained when considering the current application."

I would be grateful if you could confirm receipt of these further written submissions and also confirm that they will be included in the papers for the LRB meeting to be held on 14th December 2022, when it is understood that the case will be heard.

I look forward to hearing from you at your earliest convenience.

Yours sincerely



John MacCallum MRTPI, BSc. Hons
Planning Consultant

22/02294/FUL.

- I continue to object to the ongoing planning application in relationship to the above case and ask that the Local Review Body refuses the appeal against the original planning application refusal.
- The initial first phase Castle Gogar estate development dates back approximately 15 years and was formed from the original Castle, 3 terraced cottages and 5 new build dwellings.
- The second phase approval was for 8 flats and 1 house. There was then a further successful application for 1 additional house, making 10 additional dwellings in total.
- The application is therefore for only 5 dwellings, the sixth (plot 6 under the current application) has been previously approved though construction work has not commenced.
- The Gogar estate has now currently more than doubled, from the original 9 to 19 properties.
- The drive is 0.5 mile in length, single track, with 9 passing places and incorporates a very narrow 250-year-old bridge crossing the Gogar Burn.
- The current level of domestic and trade traffic is at its maximum capacity for the infrastructure.
- The road and bridge cannot be widened. The bridge cannot be physically widened, and the drive cannot be widened without the removal of valuable mature trees.
- The drive has been damaged by 5 years of site construction traffic. The owner of the drive, the current and previous applicant, refuses to repair the drive.
- The sewage pumping station (PS) is an issue. A previous maintenance company stated that the capacity of the PS was sufficient for the original 9 properties only, could not accommodate an additional 10 properties and certainly not a further 5 more under this application. All owners continue experiencing problems with the PS and this situation has been exacerbated by the additional 9 dwellings so far added in the second phase.
- A number of trees around the proposed development site have recently been removed. They may have been diseased?

- One of the entrance columns at 180 Glasgow Road was badly damaged by an entering construction vehicle during the earlier construction phase approximately 3 years ago. It was eventually repaired, but the repair was not consistent with the original standard.
- A previous application, 19/04849/FUL, for 5 dwellings was refused in 2019. A subsequent appeal was also refused.
- The details of the 2019 planning application and subsequent outcomes are set out at;

<https://citydev-portal.edinburgh.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=PZ5MZBEW09Z00>

- The further planning application was not materially different to the application of 2019. The only difference is the style of the 5 dwellings. Nothing else has changed to support the application.
- The inherent reasons for refusing the planning application in 2019 have not changed and are still relevant.
- There were 19 objections in 2019.
- There have been a number of objections in 2022 to the latest application and the application has been refused.
- I ask that you accept my personal objection and request that the Local Review Body refuses the appeal against the original planning application refusal dated 4th August 2022.

RICHARD BAILEY, 6 CASTLE GOGAR RIGG, EH12 9FP.

Many thanks for forwarding the further representations to this LRB Appeal.

There are a number of common threads so instead of responding to each in turn, we will cover these key themes in a single response. We also note that the three objectors are all residents of Castle Gogar and each of whom has their own reasons (not necessarily planning related) for objecting to the proposals. We trust that this context will be acknowledged in considering the points raised.

1. New Information

- a. No new information has been submitted – the LRB submission has simply responded to the reasons for refusal and expanded on issues already addressed.

2. Lack of Design Statement

- a. The Design and Access Statement was lodged with the application.

3. Access/Transport Related Comments:

- a. No objection from the City of Edinburgh Council Roads team and our own Transportation Statement confirms that there is no issue with the safety or capacity of the access to Castle Gogar Rigg.

4. Sewage/Drainage Comments:

- a. No objection from Environmental Health department. There would be no sense in proposing/developing further substantial homes at Castle Gogar if the site could not access key infrastructure.

5. Changes from previous applications:

- a. This application (and LRB submission) addresses a number of key issues that were raised at the previous LRB namely more detail being provided with regards to flooding, ecology, trees. In the intervening period the design of the proposed new homes was considered and subsequently changed to what we consider to be a better, more attractive and modern solution.
- b. We received very limited case officer feedback and we have never received any feedback, positive or negative on the design of the individual houses (or detailed feedback on the layout).

6. Impact on Castle Gogar

- a. The potential impact on Castle Gogar has been covered in detail in both the original application submission and also in the LRB Statement of Appeal.
- b. There will be no direct impact on Castle Gogar. The proposals do not propose any changes or alterations to any listed structures.

7. Setting of Castle Gogar

- a. This is dealt with in detail in both the application submission and the LRB Statement of Appeal.
- b. We contend that the setting of Castle Gogar has been compromised starting with the granting of planning permission for the original 9 homes in 2005 (in fact the development and expansion of Edinburgh Airport has already significantly impacted on the setting of Castle Gogar).
- c. Further development to the south and west of the Council has created a new setting, one reflecting a high quality residential neighbourhood which this proposal is seeking to complete in a logical and well-designed manner.
- d. This evolution of the wider setting of Castle Gogar will continue with the emergence of the International Business Gateway; the scale of which will dwarf the Castle Gogar Rigg site which will be surrounded by large-scale modern development (and the airport to the north).
- e. It is the aim of these proposals to at least ensure that the whole Castle Gogar Rigg site retains its identity as an exclusive, high quality neighbourhood. These proposals will achieve that objective.

8. Impact on existing landholding

- a. Incorrect labelling as paddock – there is no historic reference or statement of importance anywhere to identify the area of land to the south of the Castle as a paddock. If such a thing existed it is far more likely to have been located to the north and west of the Castle in closer proximity to what would have been the original stable block.
- b. The applicant is a local resident and totally invested in a high quality outcome – he lives there and has ensured that the site has been well-cared for, for the past 15 years.

9. Ownership Interest

- a. Comments made regarding the role, approach and thought process of the applicant can't possibly be known.
- b. The context of their own standing must also be considered – all three representations are from owners of properties at Castle Gogar who have all benefitted from the previous planning permissions/developments, but wish to prevent further development.
- c. They appear happy to live in high quality modern homes set within the wider setting of Castle Gogar just as long as no one else has that opportunity.

10. Existing Planning Permission for Office Building

- a. There is no debate etc. around this – development could conceivably start on the area in the centre of the Rigg immediately. This has never been disputed.

11. Trees

- a. In response to the earlier LRB refusal, we have undertaken the necessary tree survey work and the proposals take due cognisance of the findings/advice.
- b. Furthermore, the representations make no reference to the professional input/qualifications to the comments made about trees etc. Without this you must ignore comments around root protection areas and other tree protection and impact issues as to the best of our knowledge they are made by unqualified laymen. It would be unreasonable to give weight to these comments set against those of a professionally qualified tree expert.

12. Ecology

- a. In response to the earlier LRB refusal, we have undertaken the necessary protected species survey work and the proposals take due cognisance of the findings/advice.
- b. Furthermore, the representations make no reference to the professional input/qualifications to the comments made about the ecology of the site or the impact of the proposed development etc. Without this you must ignore comments around ecology. It would be unreasonable to give weight to these comments set against those of a professionally qualified ecology/protected species expert.

13. Flooding

- a. In response to the earlier LRB refusal, we have undertaken the necessary floor risk assessment and this was submitted as part of the application process. We also consulted with SEPA as part of that process. There is no objection from the Flood Protection team to the proposals.
- b. In terms of flood risk, there are no objections or concerns about the proposed development.

14. Open Space

- a. The central area of the Rigg development is not identified or designated as open space. Regardless (and contrary to some of the objector comments) we are not proposing to build on this area of the site.
- b. No part of the wider Rigg site (or specific application site) is designated Open Space.
- c. We have commented on the use of the word '*paddock*' in our main submission. The area to the south of Castle Gogar has no historic significance and has never been identified as a paddock relating to the historic setting of the Castle.