

APT Planning & Development.  
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Quarry Investments.  
10 Castle Gogar Rigg  
Edinburgh  
EH12 9FP

**Decision date: 4 August 2022**

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

Erect 6x dwellings  
At Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh

**Application No:** 22/02294/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 16 May 2022, this has been decided by **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 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 .

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

Drawings 01-22, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

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

The proposal will have a detrimental impact on the setting of the listed building and does not comply with the Edinburgh Local Development Plan. The proposal is not acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and LDP policies Env 3, Env 12, Env 16, Env 18, Hou 1, Emp 6, Des 3 and Des 4.

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 Adam Cairns directly at [adam.cairns@edinburgh.gov.uk](mailto:adam.cairns@edinburgh.gov.uk).



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

## NOTES

1. If the applicant is aggrieved by the decision of the planning authority 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 appeal to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The appeal can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website and sent to the Planning and Environmental Appeals Division, 4 The Courtyard, Callendar Business Park, FALKIRK FK1 1XR.
2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, 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 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 in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

# Report of Handling

**Application for Planning Permission  
Land 80 Metres South Of , 6 Castle Gogar Rigg, Edinburgh**

**Proposal: Erect 6x dwellings**

**Item – Delegated Decision  
Application Number – 22/02294/FUL  
Ward – B01 - Almond**

## **Recommendation**

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

## **Summary**

The proposal will have a detrimental impact on the setting of the listed building and does not comply with the Edinburgh Local Development Plan. The proposal is not acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and LDP policies Env 3, Env 12, Env 16, Env 18, Hou 1, Emp 6, Des 3 and Des 4.

## **SECTION A – Application Background**

### **Site Description**

The site relates to an area of green open space forming part of the grounds associated with Castle Gogar, a white harled, four storey, Baronial style tower house dating from 1625 with later 19th century extensions. The castle, stables, gatehouse and garden walls are category A listed (Listed Building Reference: LB27092, 14/07/1966).

The application site lies to the south east of the castle, a tree lined open space area which stretches along the main drive. It was previously utilised as a paddock.

Five detached houses and the stable block conversion were granted planning permission in 2005 under 04/02302/FUL and 04/02302/LBC as an enabling development for the restoration of the castle. Further developments have since been approved within the grounds, including the erection of two apartment blocks and a separate dwelling (ref. 15/01051/FUL) and a further dwelling house was approved in 2017 (ref. 17/00202/FUL).

Castle Gogar is situated approximately six miles from Edinburgh city centre and 0.25 miles from the Gogar Roundabout on the north side of Glasgow Road (A8). The site is

accessed off the A8 through the original gatepiers onto a single track, tree lined drive, approximately 600 metres in length. The tram line to Edinburgh Airport crosses the drive just after the gatehouse and the road is two-lane at this point.

There are groups and bands of mature deciduous trees within the grounds, notably the avenue lining the main drive and mature tree belt around the former paddock.

The secondary runway of Edinburgh Airport adjoins the north and east boundaries of the site and the Royal Bank of Scotland headquarters lies directly south on the opposite side of the A8. The surrounding undeveloped land is primarily agricultural. A strip of land to the south of the site is, however, defined in the Local Development Plan (LDP) as open space for the proposed International Business Gateway.

## **Description Of The Proposal**

The application is for planning permission for the erection of 6 two-storey, large detached dwelling houses with associated access, parking, private gardens and landscaping.

The dwelling houses proposed shall be constructed within the open space "paddock" area. The proposed houses are contemporary in design with white rendered walls, single-ply and sedum roofing and dark grey aluminium clad timber framed windows & doors.

Each house has a double garage and off-street parking.

## **Supporting Information**

The following documents have been submitted in support of the application and are available to view on the Planning and Building Standards Online Services:

- Planning/Design Statement
- Tree Survey
- Protected Species Survey
- Landscape and Visual Appraisal
- Transport Statement
- Proposed Elevations
- Proposed Plans
- Proposed Site/Roof Plan
- Existing Site Plan
- Location Plan

## **Relevant Site History**

04/02302/LBC  
Castle Gogar  
180 Glasgow Road  
EDINBURGH  
EH12 9BQ

Restore 17th century Castle Gogar as family residence, restore and convert existing ruined stables block into two residential properties, alter south boundary of walled garden and demolish greenhouses and former piggery (as amended)

Granted

25 February 2005

04/02302/FUL

Castle Gogar  
180 Glasgow Road  
EDINBURGH  
EH12 9BQ

Restore 17th century Castle Gogar as family residence, restore and convert existing ruined stable block into two residential properties and erect one office building and five residential properties (as amended)

Granted

31 May 2005

05/03335/FUL

Castle Gogar Estate  
180 Glasgow Road  
Edinburgh  
EH12 9BQ

Application to construct new build four (4) contemporary residential properties, one new-build vernacular gate house, garage and associated walled gated entrance.

withdrawn

2 March 2006

14/04109/FUL

Land 80 Metres South Of 6  
Castle Gogar Rigg  
Edinburgh

Erection of 2 apartment blocks and 1 'Gatehouse' property, with associated access, parking, garden ground and landscaping.

withdrawn

10 March 2015

15/01051/FUL

9 Castle Gogar Rigg  
Edinburgh  
EH12 9FP

Erection of 2 apartment blocks (total of 8 apartments) and 1 detached dwelling house with associated access, parking, garden ground and landscaping on land adjacent to 9 Castle Gogar Rigg, Edinburgh.

Granted

9 September 2015

16/05610/FUL

Land 80 Metres South Of 6  
Castle Gogar Rigg  
Edinburgh

Form an earth bund, approximately 1m high, grass seeded, in retrospect  
Granted  
9 February 2017

17/00202/FUL  
Land 80 Metres South Of 6  
Castle Gogar Rigg  
Edinburgh

Erection of 1 dwelling house immediately to the south of 9 Castle Gogar Rigg  
Granted  
31 March 2017

19/04849/FUL  
Land 80 Metres South Of 6  
Castle Gogar Rigg  
Edinburgh

Proposed development of five new detached homes.  
Refused  
20 December 2019

### **Other Relevant Site History**

### **Consultation Engagement**

SEPA

Tram

Flood Planning

Historic Environment Scotland

Transportation Planning

Policy

Archaeology

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 4 August 2022

**Date of Advertisement:** 27 May 2022

**Date of Site Notice:** Not Applicable

**Number of Contributors:** 5

## **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 in Historic Environment: Setting

Historic Environment Scotland's guidance notes on Managing Change in the Historic Environment set out the principles that apply to altering the setting of historic buildings.

The previously approved enabling development for the restoration of Castle Gogar (ref. 04/02302/FUL) has been completed, except for the single storey office building measuring approximately 680m<sup>2</sup> in floor area which was to occupy the "village green" area of open space to the north of this current development site. The five large detached houses and apartments which have been erected within the extended curtilage of the listed building have changed its original landscape setting.

The previous development granted planning permission under 04/02302/FUL was a calculated approach to ensure the refurbishment of Castle Gogar. The development approved in 2015 (ref. 15/01051/FUL) was to enable suitable, valuable green space to remain within the heart of the estate and to minimise the impact of the development upon the setting of the castle (the apartments are positioned further away than the proposed office block). As a result, the listed building no longer dominates much of its immediate surroundings as it did prior to the enabling development and later developments. Nevertheless, the significance of the paddock, the main tree-lined drive and the green open space enclosed by mature trees to the south of the Castle, to the setting of the estate and to the listed building is noted in all subsequent reports relating to proposed development on this site.

Historic Environment Scotland was consulted as part of the assessment of the application and advise that the

*While this proposal is different in terms of design and siting of each unit within each respective plot, the effects of development on the setting of the Castle, as noted by your Council in the Reports of Handling of the above cases, would remain broadly similar.*

*We consider therefore that the current proposals would have a detrimental impact on the setting and historical significance of Category A listed Castle Gogar (and the stable cottages contained within its listing) and that they should be resisted.*

The proposed houses 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 rural approach.

In terms of the wider setting, Castle Gogar is largely hidden from public view due to its distance from Glasgow Road and presence of Edinburgh Airport to the north-east. However, the tram link to the airport has created viewpoints from the south and west. Although the proposed houses shall be screened to a degree by the trees on the site, the housing proposed is 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.

The proposals harm the listed building and there are no significant public interest advantages which outweigh this conclusion. The proposals are not acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

The proposal will impact on the special architectural or historic interest of the listed building and is not acceptable with regards 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:

- o LDP Environment policies Env 3, Env 12, Env 16, Env 18, Env 21
- o LDP Housing policies Hou 1 & Hou 3
- o LDP Employment policies Emp 6
- o LDP Design policies Des 3, Des 4 and Des 5

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policy Env 3.

#### Impact on Setting of Listed Building

This has been assessed in part a) and the proposal does not comply with LDP Policy Env 3.

#### Principle

The site is located within the area identified for the development of an International Business Gateway (IBG) as defined in the Edinburgh Local Development Plan (LDP) and identified in NPF3. LDP policies Emp 6 and Hou 1 permit housing in this area as a component of a business-led mixed- use proposal subject to further consideration through the masterplan process, appropriate infrastructure provision and where consistent with the objectives of NPF3.

Table 4 of the LDP - Housing Proposals- identifies an opportunity for housing development as a component of business-led, mixed use proposals within the IBG, of which this site is part, where it would contribute to place making and sustainable development objectives.

Whilst the development of housing on this site, contained within an existing cluster of residential units would not prejudice the opportunity to create an International Business Gateway, the proposed development 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.

The proposal therefore does not comply with LDP policy Hou 1 or Emp 6.

#### Green/Open Space and Landscape Character

LDP policy Hou 3 states that planning permission will be granted for development which makes adequate provision for green space to meet the needs of future residents.

The private garden grounds of the proposed six dwellings are not overly large considering the footprint of the buildings. That being said, the houses proposed will be constructed broadly in accordance with the established building line. It is also noted that the properties with smaller gardens will have access to a balcony. The proposal therefore generally complies with LDP policy Hou 3.

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.

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".

It is acknowledged that planning application ref. 04/02302/FUL was for the construction of five dwelling houses and the conversion of the stable block to enable the restoration of the listed castle. At the time this was felt to be the maximum level of development permitted in order to enable the restoration works. From the plans submitted at the time there were quite large areas of the site that were to be left undeveloped as open/green space.

A later planning application (ref. 15/01051/FUL) permitted the erection of two apartment blocks (a total of eight apartments) and one detached dwelling house, within a large area of the site that was not planned for development under the previous planning permission (ref. 04/02302/FUL.)

It is further noted that on the approved site plans for application ref.15/01051/FUL, there was a further open space shown for the estate. Planning permission has, however, subsequently been granted under ref. 17/00202/FUL for the erection of a dwelling house on this site. This house has now been constructed.

The apartment blocks approved under planning permission ref. 15/01051/FUL have also now been constructed and further limit the amount of open and green space which is usable around the estate. The proposed dwelling houses will be constructed within an area of the site noted as "the paddock", also previously shown as being free from development. The intrusion into this area will further dramatically reduce the amount of open/green space available to residents of the estate. As shall be detailed later, the "paddock" area provides not only an important open space but is extremely valuable in terms of the landscape character of the main approach to the estate and the listed building.

It is further acknowledged that other areas around the site are largely contained by fencing around the airport, the walls of the private castle grounds and farm land which is also constrained by the nearby new tram tracks.

The granting of proposed dwellings within the "paddock" area would be contrary to LDP policy Env 18, therefore the proposal does not comply with LDP policy Env 18.

### Impact on Trees and Ecology

LDP 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 Edinburgh Design Guidance states that a suitably qualified Arboriculturalist should be used to survey and evaluate the existing tree and woodland resource within the site and 12 metres beyond. A tree survey is required in the form of specified in BS 5837:2012 for all trees with a stem diameter of 75mm or more, at 1.5 metres above ground on the site or within 12 metres of the boundary.

The site has many large mature trees worthy of retention especially those which are located along the long entrance to the site. It is noted that the dwelling houses proposed within the paddock area will be sited within close proximity of these trees. The Council's arboriculturalist has raised concerns about the harm that the development of these houses may have on tree roots and that their proximity may make them vulnerable to requests to be felled or severely cut back in the future.

It is noted that a Tree Survey and Arboricultural Impact Assessment has been submitted with the application. The report states that historic canopy management has been sub-standard and a programme of felling and tree surgery is required to address current safety concerns. However, insufficient evidence has been provided to show that the proposal complies with LDP policy Env 12.

LDP policy Env 16 states that planning permission will not be granted for development that would have an adverse impact upon species protected under European or UK law. A Protected Species Survey has been submitted. However, insufficient evidence has been submitted to demonstrate that the proposal complies with Env 16.

#### Design and Amenity

LDP policy Des 3 states planning permission will be granted for development where it is demonstrated that existing characteristics and features worthy of retention on the site and in the surrounding area, have been identified, incorporated and enhanced through its design.

LDP 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.

LDP 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 development would also negatively impact upon the setting of the existing new build houses. There is an established built layout and setting to these properties as they are all clustered together to the west of the castle and do not encroach further to the east than the listed stable block. The dwelling houses proposed within the "paddock" area would mean development spilling out of this cluster and would negatively impact upon the rural tree lined approach to the modern development.

The proposed buildings are modern and are large in scale. The dwellings proposed are broadly similar in design to that which has already been approved within the grounds of the wider site. However, the proposed position of the buildings would negatively impact upon its surroundings, including the character of the wider landscape.

The proposal has been designed as to not have a negative impact on existing properties in terms of potential loss of privacy. The proposed dwellings will also provide future occupants with acceptable levels of amenity. There are no other concerns with regards to sunlight/daylight levels within the proposal.

The proposal does not comply with LDP policy Des 3 & Des 4 but does comply with LDP policy Des 5.

### Road Safety

LDP policy Tra 2 states that planning permission will be granted for development where proposed car parking complies with and does not exceed the parking levels set out in Council Guidance. LDP policy Tra 3 states that planning permission will be granted for development where proposed cycle parking and storage complies with the standards set out in Council Guidance. LDP policy Tra 4 sets out the design considerations that will be taken into account where off street parking is required.

The Roads Authority was consulted as part of the assessment of this application. They responded that they had no objections subject to certain informatives being added to the consent, if granted.

It states that the Council's RCC guidance requires that property/dwellings of 6 or more are served by a road. However the presence of mature trees along the edges of the existing private access makes it difficult to achieve because of damage to tree roots. The existing access has passing places for vehicles to pass each other and priority is given to traffic entering from the A8, ensuring there is no queueing back onto this strategic road at the access junction. The distance between the access gate piers and the stop line at the junction is 9.8m and that allows 1 vehicle to be accommodated at the mouth of the access without causing any obstruction to the traffic on the A8. It is considered that the proposed development will generate fewer vehicular trips than the consented office development.

The proposals will not therefore be detrimental to road or pedestrian safety.

The Roads Authority also state that the two parking spaces proposed with each dwelling breaches the Council's parking standards. However this is considered acceptable given the site location and existing private access which could potentially be used for parking without control.

Cycles could securely be stored within the garages of the proposed dwellings.

The proposal complies with LDP policy Tra 3 and Tra 4. Whilst the proposal does breach LDP policy Tra 2, the breach is minor and is acceptable in this instance.

### Flooding and Aerodrome Safety

LDP 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.

A Surface Water Management Plan and Flood Risk Assessment has been submitted as part of this application which concludes that the proposed development is acceptable with regards to the minimisation of potential flood risk and surface or foul drainage provision. The proposals comply with LDP policy Env 21.

Edinburgh Airport was consulted and has no objections subject to an informative being applied to the consent, if granted, relating to the requirement for the developer to consult with the aero drome prior to any crane being used on the development.

#### Other material matters

#### **Water and Sewerage**

Scottish Water was consulted as part of the assessment for the 2019 application (19/04849/FUL) and confirmed that it had no objections to the proposal.

#### **Communities and families**

Communities and families confirmed as part of the assessment for the 2019 application (ref. 19/04849/FUL) that a level of developer contributions will be required if the application is approved.

#### **Waste**

Waste Planning confirmed as part of the assessment for the 2019 application (ref. 19/04849/FUL) that it had no objections as the Council already serves the estate.

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

The proposals do not comply with LDP policies Env 3, Env 12, Env 16, Env 18, Hou 1, Emp 6, Des 3 and Des 4.

#### **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 does not comply 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

The application received 5 letters of objection. A summary of the representations is provided below:

#### *material considerations*

- Impact on setting of listed building, stables and estate- This is addressed in part a) of this assessment
- Overdevelopment, loss of open space/greenspace- This is addressed in part b) of this assessment
- Inappropriate design- This is addressed in part b) of this assessment
- Traffic impact and road safety - This is addressed in part b) of this assessment
- Impact on residential amenity- This is addressed in part b) of this assessment
- Impact on trees and ecology- This is addressed in part b) of this assessment
- Concerns relating to flooding -This is addressed in part b) of this assessment
- Concerns about waste and water - This is addressed in part b) of this assessment

#### *Non-material considerations*

- Damage to entrance column at 180 Glasgow Road in earlier construction phase and not repaired to standard
- Owner refusing to pay for damage to road
- Noise resulting from earlier phase of construction

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

The material considerations identified have been addressed within the sections above.

## Overall conclusion

The proposal will have a detrimental impact on this location. The proposal is not acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and LDP policies Env 3, Env 12, Env 16, Env 18, Hou 1, Emp 6, Des 3 and Des 4.

## Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

### Reasons

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 .

### Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 16 May 2022

Drawing Numbers/Scheme

01-22

Scheme 1

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

Contact: Adam Cairns, Planning Officer  
E-mail: [adam.cairns@edinburgh.gov.uk](mailto:adam.cairns@edinburgh.gov.uk)

## Appendix 1

### **Consultations**

NAME: SEPA  
COMMENT: No comments  
DATE:

NAME: Tram  
COMMENT: No comments were received.  
DATE:

NAME: Flood Planning  
COMMENT: No objections to the proposals.  
DATE:

NAME: Historic Environment Scotland  
COMMENT: Proposals would have a detrimental impact on the setting and historical significance of Category A listed Castle Gogar (and the stable cottages contained within its listing) and that they should be resisted  
DATE:

NAME: Transportation Planning  
COMMENT: No comments were received (response from previous 2019 application was referenced).  
DATE:

NAME: Policy  
COMMENT: Contrary to LDP policies Emp 6 and Hou 1  
DATE:

NAME: Archaeology  
COMMENT: Recommended that a programme of archaeological work is undertaken prior too/ during development.  
DATE:

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

# Comments for Planning Application 22/02294/FUL

## Application Summary

Application Number: 22/02294/FUL

Address: Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh

Proposal: Erect 6x dwellings

Case Officer: Adam Cairns

## Customer Details

Name: Mr RICHARD BAILEY

Address: 6 CASTLE GOGAR RIGG EDINBURGH

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:22/02294/FUL.

- The initial 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.
- This 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 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>

- This further planning application is not materially different to the application of 2019. The only difference is the style of the 5 dwellings. Nothing else has changed.

- The inherent reasons for refusing the planning application in 2019 have not changed and are still relevant.

- There were 19 objections in 2019.

- I ask that you accept my personal objection and refuse the planning application.

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

# Comments for Planning Application 22/02294/FUL

## Application Summary

Application Number: 22/02294/FUL

Address: Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh

Proposal: Erect 6x dwellings

Case Officer: Adam Cairns

## Customer Details

Name: Mr C Hardy c/o Felsham Planning & Development

Address: 1 Western Terrace Edinburgh

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: 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:

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

2. Failure to accord with policy - there is a presumption against development that will impact the character and setting of a listed building.

3. 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.

4. 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.

5. 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.

6. 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.

# Comments for Planning Application 22/02294/FUL

## Application Summary

Application Number: 22/02294/FUL

Address: Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh

Proposal: Erect 6x dwellings

Case Officer: Adam Cairns

## Customer Details

Name: Mr David Campbell

Address: 7 Castle Gogar Rigg Edinburgh Edinburgh

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This development will overwhelm the access road from Glasgow Road to the existing Castle Gogar Rigg development, which is a single track unmaintained road already operating over its capacity.

# Comments for Planning Application 22/02294/FUL

## Application Summary

Application Number: 22/02294/FUL

Address: Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh

Proposal: Erect 6x dwellings

Case Officer: Adam Cairns

## Customer Details

Name: Miss Ruth Lunny

Address: 2 Castle Gogar Rigg Edinburgh

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: PROPOSED DEVELOPMENT OF FIVE NEW DETACHED HOMES: APPLICATION REFERENCE: 22/02294/FUL

I wish to record my objection to the above planning application for the following reasons:

### 1. Access to and road serving the development site

The Gogar estate initially comprised Gogar Castle, 3 cottages and 5 new build detached dwellings. It was recently developed further with the addition of a further detached dwelling and two four-unit apartment blocks, and there is outstanding permission for development of yet another detached dwelling.

The estate is accessed via an approximately 0.5 mile single track tree lined road, with 9 passing places, extending over a narrow B listed bridge which crosses the Gogar Burn ("the road"). The road is accessed directly from the main A8 Glasgow Road through a single vehicle width set of B listed gate piers and entails crossing the tram lines. Both the road and access to it from the A8 are barely fit for purpose having regard to the existing levels of domestic and trade use, which is more significant than perhaps might be appreciated, and certainly accounted for in the present application.

Entrance from the A8 to the road leading down to the estate is relatively hidden from driver sight and creeps up very suddenly. There is no advance signage of this junction on the A8 east bound. Other drivers don't know it's there and appear to assume left signalling to be an expression of intent at the Gogar roundabout. As such, they don't slow down and therefore have to break suddenly when residents and visitors turn off the main road into the estate access road. This is an

issue regardless of the time of day or what day of the week it is, but at busy times it is particularly dangerous, made more so by the aggravation it causes to other road users.

Given also that the gate piers at the entrance to the road can, at present, only accommodate passage of a single vehicle at a time, it is becoming an ever frequent occurrence that traffic travelling along the A8 has to stop suddenly whilst a vehicle seeking to access the road from the A8 awaits clearance of a vehicle exiting from it.

Pressure on the road and the A8 access to and from it has been exacerbated over the last 12 to 18 months as the most recently built properties on the estate have become occupied. Further development on the estate will compound pressure on the road and access its access to a level that cannot be acceptable.

The fact that the most recent development of 8 apartments and additional house was able to take place without any adjustment requiring to be made to the access road is surprising.

On enquiry in October 2017 regarding the status of the road and any possibility of adoption, particularly in the event of any future development, City of Edinburgh Council advised that the roads authority "...would not wish to see any further development on this site for road safety reasons. Roads would want to adopt the access road if this were the case."

CEC have also advised, however, that "from a planning point of view.....adoption of the access road would not be acceptable due to the inevitable loss of mature trees" which is a presumed consequence of having to widen the road in order for it to be adoptable.

If permission for the present application is to be granted, with the significantly increased number of properties to be served by it, steps ought to be taken to ensure a suitable entrance and access road is provided and adopted by the roads authority. If the roads authority maintain the position that the road cannot be adopted on grounds of suitability and planning considerations are such that steps cannot be taken to remedy this, then permission for any additional housing to be accessed by the existing road ought to be refused.

## 2. Pumping station, sewerage and drainage etc

The estate as currently constituted is served by a private pumping station which pumps domestic sewage into the main sewage system. Costs associated with the maintenance of this pump are shared equally between the existing occupied properties. A previous maintenance company advised in connection with consideration of the planning application for the two apartment blocks and house that the capacity of the pumping station was sufficient for the original 9 properties but could not accommodate an additional 10. As stated above, development of these apartment blocks and one of potentially two houses is now complete, but problems stemming from additional pressure on the pumping station to cope with the additional waste have already come to the fore.

The addition of a further 6 properties will put excessive pressure on the existing infrastructure.

Should planning permission for this latest proposal be approved, such approval should be conditional on provision of suitable drainage infrastructure for the number of properties it serves with any associated costs to achieve this being borne by the Applicant.

### 3. Supplementary / miscellaneous considerations

I take this opportunity to comment on the significant inconvenience caused to and endured by residents during the 3 year course of construction of the apartment blocks and additional house. The noise associated with the construction works, which, for the most part, ensued 7 days per week, starting early in the morning - around 0630 - was, at times, unbearable. Should planning permission in respect of the present application be granted, it would be greatly appreciated if restrictions could be put in place to ensure construction works only take place within ordinary weekday working hours.

**From:** John MacCallum

**Sent:** 15 June 2022 08:43

**To:** Planning <planning@edinburgh.gov.uk>; Planning Support  
<Planning.Support@edinburgh.gov.uk>

**Subject:** Objection to Application Reference 22/02294/FUL - Proposed 6 new houses at Castle Gogar Rigg, Edinburgh

For the Attention of the Case Officer, Adam Cairns

Dear Mr Cairns,

I refer to the above and I submit the attached objection letter on behalf of my clients, Mr Malcolm Mills and Ms Sheevaun Gallagher.

The comments have been submitted on your Council's planning portal and I have received email confirmation that they have been successfully registered as such. However, the attached letter is a hard copy for your reference as it sets out the objection more clearly in terms of headings and highlighting which was not easy to do with the online submission.

Also attached is a copy of the previous objection on behalf of my clients to the 2019 application (Ref 19/4849/FUL) which was refused, as referred to in the current objection and which is submitted in support of the current objections for emphasis and context.

I trust this is in order and I would be grateful if an acknowledgement could be issued to this email and the letter objection.

Regards,

John

John MacCallum BSc (Hons), MRTPI  
Planning Consultant

**JM Planning Services**

31 Kilburn Wood Drive,  
Roslin  
Midlothian  
EH25 9AA

# JM PLANNING SERVICES

31 Kilburn Wood Drive, Roslin Midlothian EH25 9AA

My Ref: PL/MM/SG/CGRE/85

Chief Planning Officer  
PLACE  
Waverley Court  
4 East Market Street  
Edinburgh  
EH8 8BG

22<sup>nd</sup> November 2019

Dear Sir/Madam,

**19/04849/FUL - Proposed development of five new detached homes on Land 80 Metres South of 6 Castle Gogar Rigg Edinburgh**

I am submitting this letter on behalf of my clients, Mr Malcolm Mills and Ms Sheevaun Gallagher, who own the property at No 3. Castle Gogar Rigg, Edinburgh which is one of 3 terraced cottages which sits at the northern end of the row in a former stables building. The building was partly converted to residential (part of it was already a cottage – No. 1 at the opposite end of the building to No. 3) as part of the original development at Castle Gogar Rigg.

The letter sets out their detailed objections to the above planning application submitted by Quarry Investments and which has been submitted within the notification period for comments which expires on 22<sup>nd</sup> November 2019.

## **1.0 Context**

The former stables is a Category A Listed Building which, among other features, is included as part of the Castle listing (LB27092). This is an important factor when considering the development of land within the immediate vicinity of my client's property and the potential impact on its setting as a Category A listed building, since it is located immediately to the east of the site for a new dwelling which forms part of the current planning application.

## **2.0 Objections**

My clients' objections mainly focus on the proposed house on the site opposite their own property. However, they also have significant concerns over the wider proposals for 4 other houses on the land outwith the existing small gated Castle Gogar Rigg community.

By way of general comment initially, the planning history demonstrates that development at this location has been incremental and piecemeal which contradicts the applicant's suggestion that the overall scale of development now being envisaged at Castle Gogar Rigg had been planned all along from the outset, as hinted in the Planning and Design Statement which states that *"the site now has an unfinished feel to it"* and that this current application is regarded as the *"final phase of development"* representing the *"logical conclusion of development along the southern boundary of the site."*

My clients strongly disagree with these statements and believe that the application proposals represents "development creep" and a speculative attempt to increase development at a location that is not suitable for new development, for a number of reasons as set out in this letter.

## 2.1 Planning History

The planning history for the development at this location is extensive and complex, dating back to 2004 (Application Ref 04/02302/FUL – the restoration of Castle Gogar, erection of 5 new houses, conversion of stables building to 2 houses and erection of an office building). Despite reviewing the Council's planning portal, it has been difficult to trace all the relevant documentation for the previous applications. In particular, there do not appear to be any the drawings publicly available on the Council's planning portal of the office building associated with Application Ref 04/02302/FUL other than a Perspective Drawing showing the proposed layout for the office building, 5 houses and converted stables building. There is, however, a subsequent variation application which provides these details.

It has been possible to obtain a good understanding from the Reports of Handling for the 2004 application and the Reports of Handling and various other documents associated with the further applications in 2015 (Ref 15/01051/FUL – 2 Apartment Blocks (8 apartments) and 1 House) and 2017 (Ref 17/00202/FUL – Erection of 1 house). Application Ref 14/04109/FUL for the Erection of 2 apartment blocks and 1 'Gatehouse' property, with associated access, parking, garden ground and landscaping on Land 80 Metres South of 6 Castle Gogar Rigg Edinburgh which was subsequently withdrawn, is also of relevance. Therefore, the objections contained in this letter are, to a certain degree, relied upon by that planning history.

It is noted that the 2014 application was submitted on the basis of additional residential development "in lieu of" the originally consented office building. That application was withdrawn and an alternative but similar scheme still proposing housing to replace the office building was submitted under the terms of the 2015 application which also related to the land to the south west of the original consented development but also included another area of "open space" between 1 apartment block and a house originally approved under the 2004 consent.

Information submitted in support of that 2015 application confirmed that it was a replacement for Application 14/04109/FUL. In the absence of any partial revoking of the original 2004 consent to prevent the office building from being implemented in the future, it would appear that the 2004 consent remains extant in that regard. Nevertheless, the idea promoted in the 2014 application and inferred by the replacement 2015 application that the consented office site would be a village green is a matter which remains significant in the consideration of the suitability of that location for development at all, particularly since it was the developer's own promotion of the idea to replace the office with housing elsewhere in the development:-

*"Further, the relocation of development footprint from the "green" at the centre of the Rigg site to the southern area diminishes further impact on the setting of the Castle and the established houses by a more sympathetic and appropriate setting of further development to the southern part of the Rigg site." (Ref. Planning and Design Statement, October 2014)*

The 2017 application was submitted on the basis as a substitute house for one of the houses consented in 2015 (on a plot to the east of one of the apartment blocks) and relocated to the area previously identified as "open space". However, the 2015 consent had already been implemented and the new house was approved with no partial revoking of the 2015 consent, resulting in a further 1 additional house and the loss of the "open space" between the previously consented buildings.

Consequently, the new build aspect of the development has incrementally been allowed to increase in size from 5 houses when originally approved to **15** residential units comprising 7 houses and 8 apartments (in 2 building blocks) with the Council's Planners acceding to the additional requests for development each time in 2015 and 2017. The total amounts to **17** residential units when taking into account the converted stables building to 2 houses.

My clients consider that Castle Gogar Rigg has already reached its maximum capacity and that this further proposal for new development should be resisted.

## **2.2 Consultation**

My clients are encouraged to note from the applicant's own supporting Planning and Design Statement, that Council Planning Officials are disinclined to accept any further development at this location based on early pre-application discussions, which suggests that the Council considers that Castle Gogar Rigg has reached its maximum level of development and that, possibly, further development would be an overdevelopment at the location, as well as having potential further detrimental and adverse impacts on the setting of the Listed Buildings.

The section of the Planning and Design Statement entitled "Pre-application Engagement" at paragraphs 2.37 to 2.40 has sought to highlight an "inclusive and proactive approach" to engagement with the Council. My clients would wish it to be noted that no such approach has been adopted by the developer with them or with other residents, either as part of these proposals or with the other 2 previous application proposals, even on an informal and advisory basis. This is despite the existence of an established and active Residents Committee of which the developer was and is a member.

This demonstrates the developer's complete lack of regard for the interests of those who will be most affected by new development proposed around them.

## **2.3 Site for one House (House Type 3)**

### **2.3.1 The Principle of Development**

It is evident that the 5 houses which were approved under the 2004 consent have all been implemented, as well as the stables conversion to 2 cottages, but the office building has never been implemented. The 2015 application (Ref 15/01051/FUL) was submitted on the basis that the proposed 8 apartments (within 2 building blocks) and 1 detached dwelling would be a replacement for this unimplemented office development. The Planning and Design Statement accompanying the 2015 application confirms that "*Application 14/04109/FUL has subsequently been withdrawn to be replaced by this application.*" It is significant to note that the Planning Case Officer maintained that this replacement 2015 application was still proposing new housing in place of the office building, as confirmed in the Report of Handling for the 2015 application which states:-

*"The current proposals are in lieu of the office development as it is in the existing residents' interests to preserve this area as a 'village green'."*

It was accepted then that the significant level of additional housing (**9** new residential properties) would replace the previously proposed office development and that this further development would take place on land further away from the existing Castle Gogar and stables cottage properties, all of which are Category A Listed Buildings. As noted in the planning history earlier, the preservation of a village green type of open space was to help reinstate some of the setting for these listed properties which would have been completely lost had the office development been implemented as part of the 2004 consented scheme.

My clients strongly oppose the proposal to develop on this land as they (along with other existing residents) believe the opportunity to build on that land has been lost based on subsequent proposals to omit the office development and the intention to create a village green. The consenting in 2015 of housing development on land further away with less impact on the listed buildings, in place of the previously consented office building, with that land being retained as open space, as was intended, is a material planning consideration for the current application. Consequently, my clients believe this should have considerable weight when assessing this proposal which re-introduces the prospect of developing this site again.

### **2.3.2 Siting and Design of House Type 3**

The plans for proposed house type 3 illustrate a style of house which is 2 storey in height and with a pitched roof, similar to what would be found in any modern urban or suburban development. It also has a single storey element to it as an off-shoot, creating an odd L-shape at an offset angle. The roof ridge of the 2 storey element extends to a similar height as the property to the north (No. 6 Castle Gogar Rigg) and the single storey roof ridge is comparable with the roof ridge height of the converted stables building to the east (Nos. 1 to 3 Castle Gogar Rigg).

In addition to my clients' objection to the principle of a house at this location, for the reasons stated earlier, they also object to the style and design of the house type and to its siting on the plot.

Firstly, in terms of its style and design, the shape of the building footprint with a combination of single storey and 2 storey elements, both with pitched roofs, would introduce a wholly incongruous and alien building relative to its surroundings, both in respect of the Category A Listed Buildings of the converted Stable Buildings (Nos. 1 to 3 Castle Gogar Rigg) and the new build houses, which reflect a more modern and contemporary design approach consistent throughout.

Secondly, the proposed house is to be sited close to the northern and eastern boundaries of the plot, close to the properties at Nos. 1 to 3 and No. 6 Castle Gogar Rigg. The properties at Nos. 1 to 3 have their garden to the front (west) and their main outlook is to the west, based on the internal layout. No. 2 and No. 3 will be particularly impacted on as both the single storey and the 2 storey part of the proposed house will be directly across from them respectively, giving a sense of enclosure rather than a more open outlook that they presently enjoy. The positioning of the proposed house, combined with the design, scale and massing of the building will therefore create an overbearing and dominating appearance on these immediately adjacent properties, in particular, dwarfing the listed converted stables buildings. This will have a significant adverse and detrimental impact on the setting of this Category A Listed Building.

In the absence of the approved drawings being available for the office building, as alluded to earlier, it has not been possible to undertake a detailed comparison exercise with the proposed house proposal. However, the site perspective drawing, if depicting a correct location for the office building, clearly shows the office building being sited further away from the closest buildings to the north and east, as described above. This reflects a better relationship with these buildings and demonstrates greater respect for the setting of the Category A Listed stables building in particular.

Any new development at this location, if it was ever to be deemed acceptable again by the Council, should relate to the more modern part of the development and should therefore only be sited further to the west on its plot, as per the office building originally accepted. The design, scale and massing of any building should also reflect the modern style of housing in that part of the development. However,

the expectation by my clients and the other residents at Castle Gogar Rigg was previously and still is for this area to be a village green and the developer should be required to honour this since it was part of the 2015 application to justify the further residential development elsewhere in the development in place of the office building.

It is considered therefore that the proposed house as submitted is **contrary to Policy Env 3 Listed Buildings - Setting** in the adopted Edinburgh Local Development Plan 2016.

### **2.3.3. Site for 4 houses**

It is considered important to draw reference to the Council's Planner's reports for the 2015 and 2017 applications, in which it is stated: ***"the important part of the curtilage can now be defined as the main tree-lined drive and the green open space enclosed by mature trees to the south of the Castle."*** This area represents the main part of the current application site where it is proposed to erect 4 new houses. The Heritage Impact Assessment which supports the application appraises the potential impact on the cultural assets that exist in the vicinity of the site, of which it is noted that there are many, in addition to the Castle itself.

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.

My clients would argue initially that the housing proposed on these 4 plots represents new development outwith the established existing gated residential community. This in itself demonstrates that the location is not a logical and natural location for further development, in addition to their belief that this area was **NOT** always regarded suitable for a "final phase of development" and was **NOT** part of a long term plan from the outset by the developer.

More importantly, they contend that the landscaped grounds either side of the driveway and the area to the south of Castle Gogar containing the identified listed structures remain the important setting for the Castle itself and these other listed buildings and help to define what remains of the cultural heritage context for the location. My clients believe they are features which add to the desirability of residing at Castle Gogar Rigg. Conversely, they do not consider it appropriate that these areas should in any way be considered as being "up for grabs" for development merely because some of the land has been used as a "building compound" for the development already permitted, according to the justification presented in the Planning and Design Statement. It is clear, therefore, to my clients that the developer has demonstrated a complete lack of respect in their initial approach to considering the suitability of this location for further development.

Clearly, the proposed development for this location would compound the detrimental impacts on the Category A Listed Buildings (Gogar Castle itself and the Bridge) that have already occurred. It is considered that the remaining important setting for the cultural heritage assets should be preserved and the application proposals would not seek to do so.

In that regard, the application is deemed to be **contrary to adopted LDP Policy Env 3**.

#### **2.3.4 Roads/Traffic/Transport**

In 2004, the Roads Department were mindful of the enabling development attributes of the proposals and did not object to that original application. In particular it was stated:-

“As the access road has a reduced standard due to the extent of tree loss if the road were upgraded to meet adoptable standards, the road will remain private.”

It is important to highlight that the same support was not evident in each of the 2015 and 2017 applications for subsequent further development at Castle Gogar Rigg, with the Council's Transport Planning Department recommending refusal of each application.

It appears that they have made concessions on the following: the access driveway road not being brought up to adoptable standards to preserve the existing trees; and improvements not being sought to the access driveway with its crossing of the Tram line and its proximity to the junction with the A8 including widening of the road, due to ownership constraints and impacts on the listed gate piers and walls at the entrance.

While the applicant has attempted to draw into the equation the unimplemented office development which has an extant consent, there was an understanding and expectation from the proposals in 2015 that the 9 new additional houses (8 apartments and 1 house) would be “in lieu of” the consented office building.

With 17 new houses already in existence, this was not the level of development that was envisaged when the initial 2004 application contained the office building, as demonstrated by the absence of any long term masterplan prepared at that time nor since. It has been allowed to develop incrementally and the current application is another piecemeal and speculative proposal representing “development creep” well beyond the level of development that was predicted would take place back in 2004.

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. This factor alone would allow the Council to assess the road safety implications of the 5 new houses in isolation and with no comparison with a scenario involving traffic generated from the office development. In that regard, the additional traffic generated by 5 houses over and above the significant level of development that has taken place since the 2004 consent is a further material consideration in the assessment of this application.

The Council's Transport Planning Department have had their recommendations overturned on the past 2 previous occasions and it is anticipated that they will likely make a similar recommendation on this proposal given the application represents a further increase in numbers. My clients would hope that both Planning and Transport Planning Officials will concur that the proposed development constitutes a further intensification of the use of the access driveway and junction with the A8 and agree that no more development is acceptable at this location on road safety grounds.

### 2.3.5. International Business Gateway (IBG) allocation

The housing development approved in 2015 was accepted as being in compliance with emerging planning policy in the Edinburgh Local Development Plan, since adopted in 2016. It was also considered that since the five large detached houses had impacted significantly on the setting of Gogar Castle and that the further development would be further away, the additional development of 2 apartment blocks (8 apartments in total) and a house would not have as detrimental an impact on the Listed Building as the original development.

The impacts of further development on these listed assets has already been covered in this letter.

With regard to other policy in the adopted LDP, the IBG allocation remains of relevance under the terms of Policy Emp 6 for this further development proposal at this location.

Both previous applications in 2015 and 2017 were rightly considered against a planning policy framework which identified the land as part of the IBG within the Development Plan, and it was determined at that time that the proposed housing was compliant with the relevant policies in SESplan and the emerging and then adopted LDP.

Wherein the policies advocate for economic development and an allowance for some limited residential development, the scope for housing within the allocation was to have been assessed as part of a masterplan exercise. Specifically, **Policy Emp 6** in the adopted LDP states:-

*“Housing as a component of a **business – led mixed use** proposal subject to further consideration through the **master plan process**, appropriate infrastructure provision and where consistent with the objectives of the National Planning Framework 3.”*

It further states:-

*“All IBG proposals must accord with the IBG development principles and other relevant local development plan policies. The West Edinburgh Strategic Design Framework (WESDF), supported by master plans where appropriate, provides further guidance for development proposals, including guidance about the required contributions towards meeting the mode share targets.”*

Notwithstanding the level of development that has already taken place at Castle Gogar Rigg in the recent past, any further new development would appear to be in conflict with the policy objectives for IBG which state that housing proposals should come forward in a comprehensive and planned way as part of the masterplanning process for the area and be part of a business led, mixed use proposal.

Furthermore, and given that the WESDF identifies the listed building at Castle Gogar as a “constraint” to development and that the indicative layouts in that document do not identify the land which is the subject of the current application to be included within any of the proposed development areas, recognising the importance of the setting for the listed building, the proposals represent an ad hoc and piecemeal attempt to introduce new housing within this strategically important Development Plan allocation in an unplanned way.

It is considered that the Council would be entitled to re-consider the suitability of the principle of further housing development at this location against the policy requirements set out in Policy Emp 6, taking cognisance also of the WESDF document.

In that regard, my clients' position is that they believe that the application is in **conflict with the stated Development Plan policy objectives for the IBG.**

**3.0 Conclusion**

The application proposals as submitted represent additional unacceptable development, both on land within the existing Castle Gogar Rigg development and outside its established boundary, for the reasons set out in this letter. The application is contrary to the relevant policies in the Development Plan and should be refused.

My clients, Mr Mills and Ms Gallagher, respectfully request that their objections, as represented by this letter submitted on their behalf, are duly considered by the Council's Planning Department and that the Council supports their position and refuses planning permission for application Reference 19/04849/FUL.

I would be grateful if you could acknowledge receipt of this letter of representation by return.

Yours sincerely,



John MacCallum BSc (Hons), MRTPI  
Planning Consultant

cc Clients

# JM PLANNING SERVICES

My Ref: PL/MM/SG/CGRE/85/2

Chief Planning Officer  
PLACE  
Waverley Court  
4 East Market Street  
Edinburgh  
EH8 8BG

15<sup>th</sup> June 2022

Dear Sir/Madam,

**22/02294/FUL - Proposed Development of 6 new houses on Land 80 Metres South of 6 Castle Gogar Rigg Edinburgh**

This representation is submitted on behalf of my clients, Mr Malcolm Mills and Ms Sheevaun Gallagher, who own the property at No 3. Castle Gogar Rigg, Edinburgh which is one of 3 terraced cottages which sits at the northern end of the row in a former stables building. The building was partly converted to residential (part of it was already a cottage – No. 1 at the opposite end of the building to No. 3) as part of the original development at Castle Gogar Rigg.

The letter sets out their detailed objections to the above planning application submitted by Quarry Investments and which has been submitted within the notification period for comments which expires on 17<sup>th</sup> June 2022.

It is relevant to point out initially that my clients objected to the previous proposals (Application Reference 19/04849/FUL) in their letter dated 22<sup>nd</sup> November 2019. Having reviewed the current application, they feel they have no option but to maintain their stance. Therefore, they wish to object to the current proposal which ostensibly relates to the same proposal for additional housing as submitted previously but for a higher number (6 instead of 5 previously), as well as a slight change in design approach for the houses and an attempt to address and overcome points raised in some of the reasons for refusal cited with the first unsuccessful scheme.

It is respectfully requested that the terms of those objections previously submitted are also taken into account in support of the same and new objections now being presented as they lend weight to the objections as well as providing some important context.

My clients are of the view that nothing has changed since the refusal of planning permission by the Council on 20<sup>th</sup> December 2019 which was supported by the Council's Local Review Body on 25<sup>th</sup> June 2020 who upheld the Case Officer's delegated decision of refusal thereby rejecting the applicant's review of that decision.

At the outset, and before outlining the detailed points of objection, it is important to mention a misleading comment noted in the supporting Planning Statement dated April 2022 (but also dated March 2022 on the front cover).

It states: ***“However at the LRB review, there was an understanding and sympathy towards the further development at Castle Gogar Rigg but that there was uncertainty over tree protection and flooding and without further information on these two issues, the panel could not support the appeal.”***

The LRB meeting was viewed live virtually by JM Planning Services and as noted at the time, there was no apparent expression of “understanding and sympathy” towards the proposals at that time, which conflicts with the above statement. Base on notes taken at the time, it is respectfully requested that the following points are considered, subject to further checking of the live footage from the Council’s archives:-

- All 4 Councillors agreed to side with the Officer’s decision. One stated that even if the additional information was requested, it would not overcome the bigger issues that the application had raised. Another stated that they couldn’t grant permission due to these other fundamental issues. Another stated that asking for the additional information would ultimately not change the Planning Official’s view.
- Only 1 Councillor expressed the view that he was not aware of the existing development at Castle Gogar Rigg and that while adding the 5 proposed houses might be appropriate, in his view, the application was still contrary to LDP policies and therefore he was in agreement with the other members of the LRB that it should be refused.

This record of the meeting is in direct contrast to that implied by applicant’s agent and is tantamount to misleading Planning Officials into thinking that the LRB took a more positive view towards further development at the location, in the absence of viewing the actual footage of the LRB meeting for themselves.

In support of this formal objection, the following points are presented to the Case Officer and it is hoped that these current proposals will be subsequently refused planning permission in a similar vein to the last unsuccessful scheme.

**1. There has been no planning policy context change that would merit a different decision of refusal to that previously for ostensibly the same proposal, but for an additional house (6 not 5).**

With regard to local planning policy, it is acknowledged that the Council has prepared a Proposed Edinburgh City Plan 2030 as the replacement to its currently adopted Local Development Plan. It is an emerging new plan with a new style and approach to the LDP.

It has been stated in the applicant’s supporting Planning Statement that the policies in the City Plan are the same as those in the extant LDP. That demonstrates that there has been no change in policy since the refusal and dismissal by the LRB of the last application in 2019/2020 that would merit the new application being considered in any new light under the extant policy context and that there are no material considerations in terms of the new emerging policy that would enable the proposals to be considered any differently now to back then. Consequently, there is no option but to refuse the application as no new arguments have been presented to justify the principle of development at this specific location.

It is also important to highlight that there is new policy are emerging and it could be argued that it is material to the consideration of the application, or certainly more so than the applicant gives credit for. For example, in the case of the Crosswind proposal for mixed use development on the adjacent Airport Runway site (currently before Scottish Ministers at appeal against non-determination) whereby the City Plan is being afforded more weight in the policy context justification than the extant LDP.

Therefore, to dismiss emerging policy which others have used in support of their proposals, would appear to fail to understand that new policy might have an impact on the application proposals. This emerging policy is being prepared within a new context of the climate emergency and the Scottish Government's Proposed National Planning Framework (draft NPF 4) which places greater emphasis than existing policy on directing new development to Brownfield sites; a greater emphasis on protecting Open Space and natural assets; and the introduction of the "20-minute neighbourhood" concept to further emphasise existing place making objectives in the decision-making process. The application proposals are in conflict with all of these objectives.

To not carry out any such assessment against this emerging policy demonstrates a lack of understanding of the relevant planning policy context and instead, the applicant is relying on weak arguments being presented again in the hope that the Council, for some reason, would forget its previous position and overturn and disregard its reasons for refusal of basically the same proposal (apart from a slight change in design and trying to address other secondary policy issues – additional points of objection on such matters will be raised further below).

Nevertheless, in short, there is nothing in the emerging policy which would otherwise lend support for the application proposals and so it is highly possible that the applicant chose not to carry out an assessment against such emerging policy as to do so would further undermine the applicant's case for the re-submitted scheme which was comprehensively rejected the last time as contrary to so many aspects of Council established LDP policy.

## **2. The site is not suitable for housing for several justified planning reasons.**

### **2.1 The site is located outwith the established development footprint that was allowed within the grounds of and to the west/south-west of Castle Gogar and which is now a self-contained gated community.**

That development is complete apart from an extant consent for an office building on one remaining area of open space within the enclosed development. However, the number of houses consented (17, or 15 - excluding the 2 stable building conversions) far exceeds what was originally envisaged and the additional development that was consented was done in a piecemeal manner and on the basis of enabling development to help support and fund the restoration of the Category A Listed Castle Gogar.

It is of note that 2 flats in one of the apartment blocks granted under a consent in 2015 have never been occupied. Also, the additional house consented as part of the same 2015 permission within the gated area and possibly one other house consented in 2017 (subject to checking) have not been progressed to date, suggesting that there is little or no demand for new flats/houses at this location.

The supporting Planning Statement refers on several occasions, as previously, to the proposed development being justified as a last phase of development that has not been completed:-

*"This therefore represents a final opportunity to remove what must now be seen as an incompatible use from the site by granting permission for this final phase of residential development in place of an office building."*

*"...the site now has an unfinished feel to it and this application seeks to secure permission for the final phase of development which we believe represents the logical conclusion of development along the southern boundary of the site."*

*“This final piece in the jigsaw at Castle Gogar Rigg...”*

My clients are of the firm belief that the only sense of development being unfinished is in respect of the developer’s consented land which remains undeveloped – as in the remaining house plot within the gated area, and not to do with any land outwith and beyond the established and consented development footprint. There is also no justification for further development on that basis either.

It is worth mentioning too that there has been a persistent and continued use of the area outwith the gated area (on areas covered by plots on the western part of the current of the application site) for assorted storage of plant and equipment including the construction of some semi-permanent structures being used for wood storage. The area was used as a hardstanding and the developer has not reinstated it to its original condition. There is a suspicion that the developer has deliberately left the land in a degraded state to create the impression, and as well as to support the argument, as presented, that the land is somehow vacant/semi-derelict and therefore suitable for developing. This is clearly not the case and such an approach would not be justified in planning terms, particularly given the adopted planning policy context for the site.

A complaint lodged by my clients to the Council’s Planning Enforcement Officer will confirm this position for the Case Officer.

The sense that the established housing is incomplete and that the 6 new houses would help to “finish off” the development is a weak argument and is being presented again for the Council to somehow accept only a short time after dismissing the previous proposal comprehensively, with no overall change in planning policy position. The applicant has presented the same arguments as previously but has also included an additional house, resulting in a proposal which is even more unacceptable when considering the principle of development at this location.

It is acknowledged that this 6-house proposal equates to 5 new houses and the redesign of a house on a plot previously granted planning permission. However, the part of the site for 5 houses was previously proposed for 4 houses in the 2019 unsuccessful application and so this increase in number and density to that rejected proposal is a further retrograde step, resulting in the current proposal even more contrary to adopted LDP policy.

While the office building may still have the potential to be developed, to present the same argument again, as previously, for it to be replaced by a further 6 houses (5 new houses and 1 redesign of a previously consented house) is not justified. While that argument was previously presented and accepted for the additional houses consented within the now gated community to make the total up to 17, it was not accepted by the Council as the justification for the last unsuccessful scheme for 5 houses which was comprehensively rejected by the Planning Case Officer and Councillors.

Consequently, any development on the land as proposed will be the death knell for the protected setting of the Category Listed Castle Gogar which the original housing, justified as enabling development at the time, was meant to secure. My clients feel that the developer’s attitude, which is almost blatantly stated within the supporting Planning Statement without any shame, is that since the setting has been compromised to such a degree already, there is no point in attempting to protect what setting is left any further, which is tantamount to a self-fulfilling prophecy using development creep. As stated in 2.3 further below, the Castle is not completely hidden, nor for all of the year and so

there is still value in protecting its setting by preventing any further development, particularly on the driveway approach and outside the entrance to the Castle and its own grounds.

## **2.2 The site forms part of the International Business Gateway (IBG) Allocation in the Adopted LDP and is afforded protection under Policy Emp 6.**

All the terms of objection previously stated in respect of the IBG are relevant but to highlight the main points, the following is repeated to substantiate the objection to the current proposals;-

***“Notwithstanding the level of development that has already taken place at Castle Gogar Rigg in the recent past, any further new development would appear to be in conflict with the policy objectives for IBG which state that housing proposals should come forward in a comprehensive and planned way as part of the masterplanning process for the area and be part of a business led, mixed use proposal.”***

In addition, it is noted that, the supporting Planning Statement states *“Even though the Castle Gogar ‘estate’ is within the IBG allocation, it is outwith the area subject to the ongoing masterplanning exercise. It is recognition of the existing built form at Castle Gogar.”*

This statement has no relevance as it is understood that the masterplan has no status at the present time. The land could still either be included in a future masterplan exercise or it could form part of an area of open space to off-set the area to be developed as part of the existing or any future masterplan.

Consequently, the current proposals which are not part of a business-led development, remain conflicted by adopted LDP Policy Emp 6 and Hou 1 and therefore a standalone housing proposal at the location is inappropriate, notwithstanding that the site is not acceptable as a housing site for other reasons, as stated in this objection and for the reasons for refusal cited for the last unsuccessful scheme.

## **2.3 The supporting Planning Statement refers to the site as vacant land. This description is not only incorrect, but it is also misleading for several reasons.**

Firstly, the land forms part an integral part of the landscape setting and tree lined driveway approach leading to Castle Gogar and to the now established gated community at Castle Gogar Rigg. It is vital to creating a sense of place and identity for these now established buildings which sit neatly as a group in a small area of countryside in the wider urban hinterland within which it sits. Otherwise, to develop the land in the manner proposed would suburbanise the area and the semi-rural character of the approach would be lost. Furthermore, as it would not be done as part of a planned exercise under the IBG masterplan allocation, it would have the potential to create an alien development, not in keeping with any of the planned development within the IBG, as the new houses would be in a more visible location than the houses in the established gated community development.

Secondly, the land does have a use which is regarded as open space. The land is grassed and contains trees. While it may not have an allocation as Public Open Space in the adopted LDP, it nevertheless has a value as open space, even if it is in private ownership. The Council recognised this natural asset (citing other concerns in terms of impact on trees and ecology) and therefore my clients support the reason for refusal cited previously in this regard. Consequently, and with no change in the planning policy position, as already stated, the proposals are considered to be still

contrary to adopted LDP Policy Env 18 and they hope that the Council will maintain this approach when assessing the current application and similarly reject these current proposals.

Thirdly, the approach driveway forms part of the essential setting for the Category A Listed Castle Gogar, along with the listed bridge which is positioned just south of the application site boundary. Unlike the previous application in 2019, the current application does not contain a supporting Heritage Impact Assessment. 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.”***

Therefore, to not even address the heritage impact this time is an additional failing of the current proposals. Instead, the supporting Planning Statement tries to address the issue by responding to reason for refusal 8 of the previously unsuccessful scheme with an assessment against the HES managing Change picks up on the

It seeks again to display a lack of importance and respect being afforded to Category A listed buildings which are in such close proximity to the application site by stating: “The importance and protection of the setting of Castle Gogar has been compromised time and time again”, when in fact some new development and the infrastructure projects to which it refers as having such an adverse impact, are further away from the Castle than the current application proposals would be.

The supporting Planning Statement also states the following:-

*“Castle Gogar is essentially hidden from view by high walls, an impenetrable gate and existing tall boundary vegetation. It does not interact with its immediate surroundings but perhaps more importantly when assessing setting and impact, there are few clues to its very existence. The application site (in its existing state) does not offer any clues as to what lies beyond the gate and walls/trees, the Castle is an invisible element of the site.”*

However, this is not completely accurate and there is a failure to understand that, in winter when the deciduous trees in and around the grounds of Castle Gogar are bare, the Castle is more visible from all directions, including the approach to the Castle from the shared driveway leading also to Castle Gogar Rigg.

Consequently, and notwithstanding the absence of any supporting Heritage Impact Assessment to attempt to justify this latest development proposal which should have been prepared to address the increase in setting impact as a result of the increase in house numbers compared to the previous unsuccessful scheme, the current application proposals demonstrate that they are still contrary to Historic Environment Scotland’s Managing Change in the Historic Environment – Setting and adopted LDP Policies Env 3 and Des 4.

Lastly, but with specific regard to the listed bridge leading to Castle Gogar, it is of relevance to highlight the following statement contained in the supporting Planning Statement:-

*“Furthermore and at significant cost, the applicant has painstakingly restored the bridge over the Gogar Burn, enhancing its setting and seeking to ensure that its future condition and maintenance is secured. This benefits the whole of the Gogar Rigg development (both practically and in terms of its attractive restoration) whilst also providing a historic link and clue to what lies beyond, even though the Castle is completely hidden from view.”*

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.

**2.4 Additional information has been submitted to satisfy some of the deficiencies of the last unsuccessful scheme whereby information that should have been submitted for consideration under policy requirements, was not included. These matters are now addressed below.**

The previous 2019 application was deficient at the point of its submission in terms of the lack of an ecological survey, tree survey, surface water management plan and subsequently, post submission, a difference in opinion between the applicant and SEPA who had objected on the basis that their flood maps showed the majority of the application site for development being located in a flood plain, a point which was contested by the applicant later.

It is noted that the applicant has now undertaken the necessary protected species survey (Ecology) and tree survey. The Planning Statement refers to a Flood Risk Assessment having been undertaken by ITP Energised, but there is no copy available on the Council's website to view at this time, if it has indeed been submitted.

My clients have no comments on the ecological matters, suffice to say that they hope that the Council will undertake due diligence in consultation with their Natural Heritage colleagues and SNH, if required, to determine the suitability and accuracy of the report and its findings.

However, in terms of the tree survey and report, it is significant to note that only 2 trees are necessary for immediate removal as a result of tree survey. The remainder of the trees are to be retained with more regular future maintenance recommended. This suggests that the condition of the trees is such that they are not in immediate danger and that they are able to be retained. This supports the view

that they should be retained to maintain the attractive tree-lined driveway to Castle Gogar and that the intervention of built development around these trees would likely compromise this setting significantly and detract from the semi-rural character of a landscaped entrance to Castle Gogar and the gated Castle Gogar Rigg community beyond. Particularly so now that the current proposal amounts to 3 new houses along the driveway on the same space that 2 houses were proposed, and rejected, previously.

To substantiate this point of objection, the Tree Survey report itself states that ***“the avenue as a whole should be regarded as being of Category A significance in terms of historic and landscape values.”***

In addition, it is further noted in the Protected Species Survey that linear features are often used for foraging and commuting purposes by bats (and other mammals such as badger and deer) and can be important connective corridors to habitats within the wider area. It recommends that these should be maintained and kept as dark as possible during the night.

While, according to the report, there are measures that can be introduced during construction and post development that can reduce the impact of light on these species, it nevertheless highlights the unsuitability of new development as proposed along a linear feature such as the existing tree-lined driveway and landscape setting afforded by this particular location.

The application proposals have failed to satisfy many of the Council's previous concerns for ostensibly the same development based on utilising land that is not suitable for housing for a number of reasons, as set out in the reasons for refusal cited with the previous unsuccessful scheme and as set out above in this objection and in the previous objections. To further highlight the site's unsuitability for housing, both the Tree Survey and Protected Species Survey have demonstrated that the proposed housing development is also unacceptable in terms of its potential adverse impact on the local environment and the proposals in themselves cannot be sufficiently justified to depart from policies on tree protection and protection of protected species. Consequently, the current application is contrary to adopted LDP Policy Env 12 and Env 16.

### **3. Numerous previous Applications for additional houses (after acceding to the initial enabling development proposals in 2004), were not supported by the Council's Roads Department**

The following is an extract from the objection letter submitted on behalf of Mr Mills and Ms Gallagher. These points on **Roads/Traffic/Transport** are still of relevance to the current proposals and it is important to repeat them again for the purposes of this objection. Note – the reference to 5 new houses remains valid since the current application also includes the redesign of a house on a previously consented plot and so the number of new houses remains the same as the last application

“In 2004, the Roads Department were mindful of the enabling development attributes of the proposals and did not object to that original application. In particular it was stated:-

*“As the access road has a reduced standard due to the extent of tree loss if the road were upgraded to meet adoptable standards, the road will remain private.”*

It is important to highlight that the same support was not evident in each of the 2015 and 2017 applications for subsequent further development at Castle Gogar Rigg, with the Council's Transport Planning Department recommending refusal of each application.

It apparent that they have made concessions on the following: the access driveway road not being brought up to adoptable standards to preserve the existing trees; and improvements not being sought to the access driveway with its crossing of the Tram line and its proximity to the junction with the A8 including widening of the road, due to ownership constraints and impacts on the listed gate piers and walls at the entrance.

While the applicant has attempted to draw into the equation the unimplemented office development which has an extant consent, there was an understanding and expectation from the proposals in 2015 that the 9 new additional houses (8 apartments and 1 house) would be "in lieu of" the consented office building.

With 17 new houses already in existence, this was not the level of development that was envisaged when the initial 2004 application contained the office building, as demonstrated by the absence of any long term masterplan prepared at that time nor since. It has been allowed to develop incrementally and the current application is another piecemeal and speculative proposal representing "development creep" well beyond the level of development that was predicted would take place back in 2004.

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. This factor alone would allow the Council to assess the road safety implications of the 5 new houses in isolation and with no comparison with a scenario involving traffic generated from the office development. In that regard, the additional traffic generated by 5 houses over and above the significant level of development that has taken place since the 2004 consent is a further material consideration in the assessment of this application.

The Council's Transport Planning Department have had their recommendations overturned on the past 2 previous occasions and it is anticipated that they will likely make a similar recommendation on this proposal given the application represents a further increase in numbers. My clients would hope that both Planning and Transport Planning Officials will concur that the proposed development constitutes a further intensification of the use of the access driveway and junction with the A8 and agree that no more development is acceptable at this location on road safety grounds."

#### **4. Pressure on the drainage system associated with the existing and this proposed new development remains a concern for my clients.**

It is recognised that drainage is more of a technical issue than a planning issue, with the Council relying on comments from Scottish Water as a consultee on the application. They would advise on any constraints but only on the public system. The technicalities of a private drainage system would not be a planning matter, but the applicant should still have to provide sufficient detail to be able to demonstrate that there is a drainage solution for the additional housing, either as a new drainage system or any change/upgrade to an existing private system which then connects into the public system.

From the information provided, this has not been made clear. It is suggested that the Council should interrogate this matter to ensure that satisfactory drainage details have been provided to support the application and that the details are made publicly available.

**5. Lastly, the following is an extract from the Conclusions Section of the applicant's Planning Statement with comments underneath in bold as additional points of objection to add emphasis to and to supplement the main body of objections above.**

**5. CONCLUSIONS**

*5.1. Over the past 15 years, previous planning permissions have seen the development of seven new homes, eight apartments and two converted stable buildings within the extended curtilage of Castle Gogar.*

*5.2. As a result of these existing developments, the site now has an **unfinished feel** to it and this application seeks to secure permission for the final phase of development which we believe represents the logical conclusion of development along the southern boundary of the site.*

**This argument was not accepted before, and so there is no reason why it should be now as there has been no change in policy position.**

*5.3. This application represents an opportunity to introduce further limited high quality residential development to the site, complementing existing homes, sitting comfortably and appropriately in its setting and providing six executive style homes at an attractive and marketable location.*

**Not an allocated site and not aligned with the Council's business-led development objective as part of the IBG site under Policies Hou 1 and Emp 6.**

*5.4. The planning context of the site has changed in the recent past. The site had previously been part of the Edinburgh Green Belt, but now falls within the major International Business Gateway (IBG) allocation (running eastwards from Edinburgh Airport). The proposals would be complementary to the long-term aspiration for this area of Edinburgh.*

**Not a new argument – this is the same as in 2019 and it was rejected then. There has been no change in policy that would allow the Council to deviate from that position.**

*5.5. Planning Policy encourages appropriate residential development as part of the Strategic Development Areas (SESPlan) of which the IBG is one and as this statement concludes, the proposals comply with other policies relating to residential development and design. The houses will also be built to meet and exceed modern standard in terms of sustainability, being attractive and environmentally friendly. All other things being considered equal, the principle of residential development at Castle Gogar Rigg is established.*

**Only within the confines of the gated site. The development outwith this area is not established and represents inappropriate development, contrary to Development Plan policy.**

*5.6. The proposals seek to introduce a modern, simple yet high quality design, taking appropriate reference from the existing built form and acting as an appropriate conclusion to development at Castle Gogar Rigg.*

**Not relevant if the principle of development is not acceptable, which it is not, as nothing has changed in terms of Development Plan policy.**

*5.7. The wider setting of Castle Gogar has been compromised over time, whether by the airport to the north and east, the tram depot at Gogar and the development of the Royal Bank of Scotland Headquarters to the south. The International Business Gateway represents the latest and alongside the Airport, most impactful, development and will further, irreparably change the wider context of Castle Gogar.*

**This was argued previously and was rejected convincingly by the Council.**

*5.8. This final piece in the jigsaw at Castle Gogar Rigg will ensure that development within the immediate environs of Castle Gogar is of the highest quality and although the Castle does not respond to, nor interact with 'The Rigg', the completion of the modern development will ensure that the Castle sits as the hidden gem amongst a very high-quality setting.*

**It is not an unfinished development – it is complete development, within the confines of its well-defined boundaries. The houses at CGR were only allowed to increase in number as enabling development towards the improvement works to the Castle Gogar.**

*5.9. We have sought to add further interest to the site, with the new homes acting as an attractive introduction to the site. Whilst creating modern, attractive and marketable homes at this accessible and appropriate location, we are also ensuring the high quality setting of the wider Castle site.*

**This is disputed for the reasons stated in the substantive objection points stated above.**

*5.10. The application site and access road are under single ownership, not only ensuring the delivery of the new homes, but also (and has been the case over recent years) ensuring the maintenance and upkeep of the development. The applicant is also a resident of Castle Gogar Rigg and has already spent a great deal of time and money restoring the bridge over the Gogar Burn, itself, a listed structure. This sense of responsibility and stewardship will continue into the future.*

**My clients and the other existing residents at CGR have endured on-going construction work for years (presently still unfinished) at a cost, both financially to them but also in terms of the inconvenience and disturbance from construction work and HGVs. Residents have a very different view to the applicant's sense of responsibility and stewardship.**

*5.11. We have instructed further professional input with regards to landscape (OPEN), flooding (ITP), ecology (ITP) and tree protection (Caledonian) and transportation (SWECO) to ensure that we have assessed the pertinent issues in the determination of this application. Further limited development will have little or no impact on road capacity or safety, whilst the Landscape and Visual Analysis informed and guided the design process. Critically development will not increase the risk of flooding on the application site or elsewhere.*

**This is acknowledged but not all overcome the policy criteria that would be sufficient to override the principal objection to new housing at this location.**

5.12. *The evolution of this site over the past 15 years, and following decades of decay and deterioration, has brought Castle Gogar back to its former glory as a building, the compromise being the development within the wider site.*

**The restoration of the Castle has already been achieved and so no further development is either necessary or appropriate outwith the confines of the now established gated community. No further enabling development is required nor justified. As is supported by policy, further development would compromise the listed building further and the local environmental qualities of this site which is characterised by valuable open space comprising trees and important habitat.**

5.13. *We **strongly** contend that these proposals offer an appropriate and high quality development opportunity to complete this discreet neighbourhood in an attractive and high quality way and maintaining and enhancing the character of Castle Gogar Rigg.*

**The site is not a recognised housing site: creating high-quality sustainable development can be achieved on other appropriate sites in locations where full compliance with all Council adopted LDP policy could be achieved.**

### **Conclusions**

The current application proposals which are a resubmission of a previous unsuccessful proposal still represent additional unacceptable development, particularly the part outwith its established boundary, for the reasons set out in this letter. The application is contrary to the relevant policies in the Development Plan and should be refused.

My clients, Mr Mills and Ms Gallagher, respectfully request that their objections, as represented by this letter submitted on their behalf, and further supported by their previous objections in the letter attached, are duly considered by the Council's Planning Department and that the Council supports their position and refuses planning permission again, for this proposal under application Reference 22/02294/FUL.

I would be grateful if you could acknowledge receipt of this letter of representation by return.

Yours sincerely,



John MacCallum BSc (Hons), MRTPI  
Planning Consultant

cc Clients

Enc. Letter dated 22<sup>nd</sup> November 2019

# Comments for Planning Application 22/02294/FUL

## Application Summary

Application Number: 22/02294/FUL

Address: Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh

Proposal: Erect 6x dwellings

Case Officer: Adam Cairns

## Customer Details

Name: Mr John MacCallum

Address: 31, Kilburn Wood Drive Kilburn Wood Drive Roslin

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: These comments are submitted by JM Planning Services on behalf of Mr Malcolm Mills and Ms Sheevaun Gallagher who own No 3. Castle Gogar Rigg, Edinburgh which is one of 3 terraced cottages which sits at the northern end of the row in a former stable building. The building was partly converted to residential (part of it was already a cottage - No. 1 at the opposite end of the building to No. 3) as part of the original development at Castle Gogar Rigg.

It is relevant to point out initially that my clients objected to the previous proposals (Application Reference 19/04849/FUL) in their letter dated 22nd November 2019. Having reviewed the current application, they feel they have no option but to maintain their stance. Therefore, they wish to object to the current proposal which ostensibly relates to the same proposal for additional housing as submitted previously but for a higher number (6 instead of 5 previously), as well as a slight change in design approach for the houses and an attempt to address and overcome points raised in some of the reasons for refusal cited with the first unsuccessful scheme.

It is respectfully requested that the terms of those objections previously submitted are also taken into account in support of the same and new objections now being presented as they lend weight to the objections as well as providing some important context.

My clients are of the view that nothing has changed since the refusal of planning permission by the Council on 20th December 2019 which was supported by the Council's Local Review Body on 25th June 2020 who upheld the Case Officer's delegated decision of refusal thereby rejecting the applicant's review of that decision.

At the outset, and before outlining the detailed points of objection, it is important to mention a misleading comment noted in the supporting Planning Statement dated April 2022 (but also dated

March 2022 on the front cover).

It states: "However at the LRB review, there was an understanding and sympathy towards the further development at Castle Gogar Rigg but that there was uncertainty over tree protection and flooding and without further information on these two issues, the panel could not support the appeal."

The LRB meeting was viewed live virtually by JM Planning Services and as noted at the time, there was no apparent expression of "understanding and sympathy" towards the proposals at that time, which conflicts with the above statement. Base on notes taken at the time, it is respectfully requested that the following points are considered, subject to further checking of the live footage from the Council's archives:-

- All 4 Councillors agreed to side with the Officer's decision. One stated that even if the additional information was requested, it would not overcome the bigger issues that the application had raised. Another stated that they couldn't grant permission due to these other fundamental issues. Another stated that asking for the additional information would ultimately not change the Planning Official's view.
- Only 1 Councillor expressed the view that he was not aware of the existing development at Castle Gogar Rigg and that while adding the 5 proposed houses might be appropriate, in his view, the application was still contrary to LDP policies and therefore he was in agreement with the other members of the LRB that it should be refused.

This record of the meeting is in direct contrast to that implied by applicant's agent and is tantamount to misleading Planning Officials into thinking that the LRB took a more positive view towards further development at the location, in the absence of viewing the actual footage of the LRB meeting for themselves.

In support of this formal objection, the following points are presented to the Case Officer and it is hoped that these current proposals will be subsequently refused planning permission in a similar vein to the last unsuccessful scheme.

1. There has been no planning policy context change that would merit a different decision of refusal to that previously for ostensibly the same proposal, but for an additional house (6 not 5).

With regard to local planning policy, it is acknowledged that the Council has prepared a Proposed Edinburgh City Plan 2030 as the replacement to its currently adopted Local Development Plan. It is an emerging new plan with a new style and approach to the LDP.

It has been stated in the applicant's supporting Planning Statement that the policies in the City Plan are the same as those in the extant LDP. That demonstrates that there has been no change in policy since the refusal and dismissal by the LRB of the last application in 2019/2020 that would

merit the new application being considered in any new light under the extant policy context and that there are no material considerations in terms of the new emerging policy that would enable the proposals to be considered any differently now to back then. Consequently, there is no option but to refuse the application as no new arguments have been presented to justify the principle of development at this specific location.

It is also important to highlight that there is new policy are emerging and it could be argued that it is material to the consideration of the application, or certainly more so than the applicant gives credit for. For example, in the case of the Crosswind proposal for mixed use development on the adjacent Airport Runway site (currently before Scottish Ministers at appeal against non-determination) whereby the City Plan is being afforded more weight in the policy context justification than the extant LDP.

Therefore, to dismiss emerging policy which others have used in support of their proposals, would appear to fail to understand that new policy might have an impact on the application proposals. This emerging policy is being prepared within a new context of the climate emergency and the Scottish Government's Proposed National Planning Framework (draft NPF 4) which places greater emphasis than existing policy on directing new development to Brownfield sites; a greater emphasis on protecting Open Space and natural assets; and the introduction of the "20-minute neighbourhood" concept to further emphasise existing place making objectives in the decision-making process. The application proposals are in conflict with all of these objectives.

To not carry out any such assessment against this emerging policy demonstrates a lack of understanding of the relevant planning policy context and instead, the applicant is relying on weak arguments being presented again in the hope that the Council, for some reason, would forget its previous position and overturn and disregard its reasons for refusal of basically the same proposal (apart from a slight change in design and trying to address other secondary policy issues - additional points of objection on such matters will be raised further below).

Nevertheless, in short, there is nothing in the emerging policy which would otherwise lend support for the application proposals and so it is highly possible that the applicant chose not to carry out an assessment against such emerging policy as to do so would further undermine the applicant's case for the re-submitted scheme which was comprehensively rejected the last time as contrary to so many aspects of Council established LDP policy.

2. The site is not suitable for housing for several justified planning reasons.

2.1 The site is located outwith the established development footprint that was allowed within the grounds of and to the west/south-west of Castle Gogar and which is now a self-contained gated community.

That development is complete apart from an extant consent for an office building on one remaining

area of open space within the enclosed development. However, the number of houses consented (17, or 15 - excluding the 2 stable building conversions) far exceeds what was originally envisaged and the additional development that was consented was done in a piecemeal manner and on the basis of enabling development to help support and fund the restoration of the Category A Listed Castle Gogar.

It is of note that 2 flats in one of the apartment blocks granted under a consent in 2015 have never been occupied. Also, the additional house consented as part of the same 2015 permission within the gated area and possibly one other house consented in 2017 (subject to checking) have not been progressed to date, suggesting that there is little or no demand for new flats/houses at this location.

The supporting Planning Statement refers on several occasions, as previously, to the proposed development being justified as a last phase of development that has not been completed:-

"This therefore represents a final opportunity to remove what must now be seen as an incompatible use from the site by granting permission for this final phase of residential development in place of an office building."

"...the site now has an unfinished feel to it and this application seeks to secure permission for the final phase of development which we believe represents the logical conclusion of development along the southern boundary of the site."

"This final piece in the jigsaw at Castle Gogar Rigg..."

My clients are of the firm belief that the only sense of development being unfinished is in respect of the developer's consented land which remains undeveloped - as in the remaining house plot within the gated area, and not to do with any land outwith and beyond the established and consented development footprint. There is also no justification for further development on that basis either.

It is worth mentioning too that there has been a persistent and continued use of the area outwith the gated area (on areas covered by plots on the western part of the current of the application site) for assorted storage of plant and equipment including the construction of some semi-permanent structures being used for wood storage. The area was used as a hardstanding and the developer has not reinstated it to its original condition. There is a suspicion that the developer has deliberately left the land in a degraded state to create the impression, and as well as to support the argument, as presented, that the land is somehow vacant/semi-derelict and therefore suitable for developing. This is clearly not the case and such an approach would not be justified in planning terms, particularly given the adopted planning policy context for the site.

A complaint lodged by my clients to the Council's Planning Enforcement Officer will confirm this

position for the Case Officer.

The sense that the established housing is incomplete and that the 6 new houses would help to "finish off" the development is a weak argument and is being presented again for the Council to somehow accept only a short time after dismissing the previous proposal comprehensively, with no overall change in planning policy position. The applicant has presented the same arguments as previously but has also included an additional house, resulting in a proposal which is even more unacceptable when considering the principle of development at this location.

It is acknowledged that this 6-house proposal equates to 5 new houses and the redesign of a house on a plot previously granted planning permission. However, the part of the site for 5 houses was previously proposed for 4 houses in the 2019 unsuccessful application and so this increase in number and density to that rejected proposal is a further retrograde step, resulting in the current proposal even more contrary to adopted LDP policy.

While the office building may still have the potential to be developed, to present the same argument again, as previously, for it to be replaced by a further 6 houses (5 new houses and 1 redesign of a previously consented house) is not justified. While that argument was previously presented and accepted for the additional houses consented within the now gated community to make the total up to 17, it was not accepted by the Council as the justification for the last unsuccessful scheme for 5 houses which was comprehensively rejected by the Planning Case Officer and Councillors.

Consequently, any development on the land as proposed will be the death knell for the protected setting of the Category Listed Castle Gogar which the original housing, justified as enabling development at the time, was meant to secure. My clients feel that the developer's attitude, which is almost blatantly stated within the supporting Planning Statement without any shame, is that since the setting has been compromised to such a degree already, there is no point in attempting to protect what setting is left any further, which is tantamount to a self-fulfilling prophecy using development creep. As stated in 2.3 further below, the Castle is not completely hidden, nor for all of the year and so there is still value in protecting its setting by preventing any further development, particularly on the driveway approach and outside the entrance to the Castle and its own grounds.

2.2 The site forms part of the International Business Gateway (IBG) Allocation in the Adopted LDP and is afforded protection under Policy Emp 6.

All the terms of objection previously stated in respect of the IBG are relevant but to highlight the main points, the following is repeated to substantiate the objection to the current proposals:-

"Notwithstanding the level of development that has already taken place at Castle Gogar Rigg in the recent past, any further new development would appear to be in conflict with the policy

objectives for IBG which state that housing proposals should come forward in a comprehensive and planned way as part of the masterplanning process for the area and be part of a business led, mixed use proposal."

In addition, it is noted that, the supporting Planning Statement states "Even though the Castle Gogar 'estate' is within the IBG allocation, it is outwith the area subject to the ongoing masterplanning exercise. It is recognition of the existing built form at Castle Gogar."

This statement has no relevance as it is understood that the masterplan has no status at the present time. The land could still either be included in a future masterplan exercise or it could form part of an area of open space to off-set the area to be developed as part of the existing or any future masterplan.

Consequently, the current proposals which are not part of a business-led development, remain conflicted by adopted LDP Policy Emp 6 and Hou 1 and therefore a standalone housing proposal at the location is inappropriate, notwithstanding that the site is not acceptable as a housing site for other reasons, as stated in this objection and for the reasons for refusal cited for the last unsuccessful scheme.

2.3 The supporting Planning Statement refers to the site as vacant land. This description is not only incorrect, but it is also misleading for several reasons.

Firstly, the land forms part an integral part of the landscape setting and tree lined driveway approach leading to Castle Gogar and to the now established gated community at Castle Gogar Rigg. It is vital to creating a sense of place and identity for these now established buildings which sit neatly as a group in a small area of countryside in the wider urban hinterland within which it sits. Otherwise, to develop the land in the manner proposed would suburbanise the area and the semi-rural character of the approach would be lost. Furthermore, as it would not be done as part of a planned exercise under the IBG masterplan allocation, it would have the potential to create an alien development, not in keeping with any of the planned development within the IBG, as the new houses would be in a more visible location than the houses in the established gated community development.

Secondly, the land does have a use which is regarded as open space. The land is grassed and contains trees. While it may not have an allocation as Public Open Space in the adopted LDP, it nevertheless has a value as open space, even if it is in private ownership. The Council recognised this natural asset (citing other concerns in terms of impact on trees and ecology) and therefore my clients support the reason for refusal cited previously in this regard. Consequently, and with no change in the planning policy position, as already stated, the proposals are considered to be still contrary to adopted LDP Policy Env 18 and they hope that the Council will maintain this approach when assessing the current application and similarly reject these current proposals.

Thirdly, the approach driveway forms part of the essential setting for the Category A Listed Castle Gogar, along with the listed bridge which is positioned just south of the application site boundary. Unlike the previous application in 2019, the current application does not contain a supporting Heritage Impact Assessment. 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."

Therefore, to not even address the heritage impact this time is an additional failing of the current proposals. Instead, the supporting Planning Statement tries to address the issue by responding to reason for refusal 8 of the previously unsuccessful scheme with an assessment against the HES managing Change picks up on the

It seeks again to display a lack of importance and respect being afforded to Category A listed buildings which are in such close proximity to the application site by stating: "The importance and protection of the setting of Castle Gogar has been compromised time and time again", when in fact some new development and the infrastructure projects to which it refers as having such an adverse impact, are further away from the Castle than the current application proposals would be.

The supporting Planning Statement also states the following:-

"Castle Gogar is essentially hidden from view by high walls, an impenetrable gate and existing tall boundary vegetation. It does not interact with its immediate surroundings but perhaps more importantly when assessing setting and impact, there are few clues to its very existence. The application site (in its existing state) does not offer any clues as to what lies beyond the gate and walls/trees, the Castle is an invisible element of the site."

However, this is not completely accurate and there is a failure to understand that, in winter when the deciduous trees in and around the grounds of Castle Gogar are bare, the Castle is more visible from all directions, including the approach to the Castle from the shared driveway leading also to Castle Gogar Rigg.

Consequently, and notwithstanding the absence of any supporting Heritage Impact Assessment to attempt to justify this latest development proposal which should have been prepared to address the increase in setting impact as a result of the increase in house numbers compared to the previous unsuccessful scheme, the current application proposals demonstrate that they are still

contrary to Historic Environment Scotland's Managing Change in the Historic Environment - Setting and adopted LDP Policies Env 3 and Des 4.

Lastly, but with specific regard to the listed bridge leading to Castle Gogar, it is of relevance to highlight the following statement contained in the supporting Planning Statement:-

"Furthermore and at significant cost, the applicant has painstakingly restored the bridge over the Gogar Burn, enhancing its setting and seeking to ensure that its future condition and maintenance is secured. This benefits the whole of the Gogar Rigg development (both practically and in terms of its attractive restoration) whilst also providing a historic link and clue to what lies beyond, even though the Castle is completely hidden from view."

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.

2.4 Additional information has been submitted to satisfy some of the deficiencies of the last unsuccessful scheme whereby information that should have been submitted for consideration under policy requirements, was not included. These matters are now addressed below.

The previous 2019 application was deficient at the point of its submission in terms of the lack of an ecological survey, tree survey, surface water management plan and subsequently, post submission, a difference in opinion between the applicant and SEPA who had objected on the basis that their flood maps showed the majority of the application site for development being located in a flood plain, a point which was contested by the applicant later.

It is noted that the applicant has now undertaken the necessary protected species survey

(Ecology) and tree survey. The Planning Statement refers to a Flood Risk Assessment having been undertaken by ITP Energised, but there is no copy available on the Council's website to view at this time, if it has indeed been submitted.

My clients have no comments on the ecological matters, suffice to say that they hope that the Council will undertake due diligence in consultation with their Natural Heritage colleagues and SNH, if required, to determine the suitability and accuracy of the report and its findings.

However, in terms of the tree survey and report, it is significant to note that only 2 trees are necessary for immediate removal as a result of tree survey. The remainder of the trees are to be retained with more regular future maintenance recommended. This suggests that the condition of the trees is such that they are not in immediate danger and that they are able to be retained. This supports the view that they should be retained to maintain the attractive tree-lined driveway to Castle Gogar and that the intervention of built development around these trees would likely compromise this setting significantly and detract from the semi-rural character of a landscaped entrance to Castle Gogar and the gated Castle Gogar Rigg community beyond. Particularly so now that the current proposal amounts to 3 new houses along the driveway on the same space that 2 houses were proposed, and rejected, previously.

To substantiate this point of objection, the Tree Survey report itself states that "the avenue as a whole should be regarded as being of Category A significance in terms of historic and landscape values."

In addition, it is further noted in the Protected Species Survey that linear features are often used for foraging and commuting purposes by bats (and other mammals such as badger and deer) and can be important connective corridors to habitats within the wider area. It recommends that these should be maintained and kept as dark as possible during the night.

While, according to the report, there are measures that can be introduced during construction and post development that can reduce the impact of light on these species, it nevertheless highlights the unsuitability of new development as proposed along a linear feature such as the existing tree-lined driveway and landscape setting afforded by this particular location.

The application proposals have failed to satisfy many of the Council's previous concerns for ostensibly the same development based on utilising land that is not suitable for housing for a number of reasons, as set out in the reasons for refusal cited with the previous unsuccessful scheme and as set out above in this objection and in the previous objections. To further highlight the site's unsuitability for housing, both the Tree Survey and Protected Species Survey have demonstrated that the proposed housing development is also unacceptable in terms of its potential adverse impact on the local environment and the proposals in themselves cannot be sufficiently justified to depart from policies on tree protection and protection of protected species. Consequently, the current application is contrary to adopted LDP Policy Env 12 and Env 16.

3. Numerous previous Applications for additional houses (after acceding to the initial enabling development proposals in 2004), were not supported by the Council's Roads Department

The following is an extract from the objection letter submitted on behalf of Mr Mills and Ms Gallagher. These points on Roads/Traffic/Transport are still of relevance to the current proposals and it is important to repeat them again for the purposes of this objection. Note - the reference to 5 new houses remains valid since the current application also includes the redesign of a house on a previously consented plot and so the number of new houses remains the same as the last application.

"In 2004, the Roads Department were mindful of the enabling development attributes of the proposals and did not object to that original application. In particular it was stated:-

"As the access road has a reduced standard due to the extent of tree loss if the road were upgraded to meet adoptable standards, the road will remain private."

It is important to highlight that the same support was not evident in each of the 2015 and 2017 applications for subsequent further development at Castle Gogar Rigg, with the Council's Transport Planning Department recommending refusal of each application.

It apparent that they have made concessions on the following: the access driveway road not being brought up to adoptable standards to preserve the existing trees; and improvements not being sought to the access driveway with its crossing of the Tram line and its proximity to the junction with the A8 including widening of the road, due to ownership constraints and impacts on the listed gate piers and walls at the entrance.

While the applicant has attempted to draw into the equation the unimplemented office development which has an extant consent, there was an understanding and expectation from the proposals in 2015 that the 9 new additional houses (8 apartments and 1 house) would be "in lieu of" the consented office building.

With 17 new houses already in existence, this was not the level of development that was envisaged when the initial 2004 application contained the office building, as demonstrated by the absence of any long term masterplan prepared at that time nor since. It has been allowed to develop incrementally and the current application is another piecemeal and speculative proposal representing "development creep" well beyond the level of development that was predicted would take place back in 2004.

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. This factor alone would allow the Council to assess the road safety implications of the 5 new houses in isolation and with no comparison with a scenario involving traffic generated from the office development. In that regard, the additional traffic generated by 5 houses over and above the significant level of development that has taken place since the 2004 consent is a further material consideration in the assessment of this application.

The Council's Transport Planning Department have had their recommendations overturned on the past 2 previous occasions and it is anticipated that they will likely make a similar recommendation on this proposal given the application represents a further increase in numbers. My clients would hope that both Planning and Transport Planning Officials will concur that the proposed development constitutes a further intensification of the use of the access driveway and junction with the A8 and agree that no more development is acceptable at this location on road safety grounds."

4. Pressure on the drainage system associated with the existing and this proposed new development remains a concern for my clients.

It is recognised that drainage is more of a technical issue than a planning issue, with the Council relying on comments from Scottish Water as a consultee on the application. They would advise on any constraints but only on the public system. The technicalities of a private drainage system would not be a planning matter, but the applicant should still have to provide sufficient detail to be able to demonstrate that there is a drainage solution for the additional housing, either as a new drainage system or any change/upgrade to an existing private system which then connects into the public system.

From the information provided, this has not been made clear. It is suggested that the Council should interrogate this matter to ensure that satisfactory drainage details have been provided to support the application and that the details are made publicly available.

5. Lastly, the following is an extract from the Conclusions Section of the applicant's Planning Statement with comments underneath in bold as additional points of objection to add emphasis to and to supplement the main body of objections above.

## 5. CONCLUSIONS

5.1. Over the past 15 years, previous planning permissions have seen the development of seven new homes, eight apartments and two converted stable buildings within the extended curtilage of Castle Gogar.

5.2. As a result of these existing developments, the site now has an unfinished feel to it and this

application seeks to secure permission for the final phase of development which we believe represents the logical conclusion of development along the southern boundary of the site. This argument was not accepted before, and so there is no reason why it should be now as there has been no change in policy position.

5.3. This application represents an opportunity to introduce further limited high quality residential development to the site, complementing existing homes, sitting comfortably and appropriately in its setting and providing six executive style homes at an attractive and marketable location.

Not an allocated site and not aligned with the Council's business-led development objective as part of the IBG site under Policies Hou 1 and Emp 6.

5.4. The planning context of the site has changed in the recent past. The site had previously been part of the Edinburgh Green Belt, but now falls within the major International Business Gateway (IBG) allocation (running eastwards from Edinburgh Airport). The proposals would be complementary to the long-term aspiration for this area of Edinburgh.

Not a new argument - this is the same as in 2019 and it was rejected then. There has been no change in policy that would allow the Council to deviate from that position.

5.5. Planning Policy encourages appropriate residential development as part of the Strategic Development Areas (SESPlan) of which the IBG is one and as this statement concludes, the proposals comply with other policies relating to residential development and design. The houses will also be built to meet and exceed modern standard in terms of sustainability, being attractive and environmentally friendly. All other things being considered equal, the principle of residential development at Castle Gogar Rigg is established.

Only within the confines of the gated site. The development outwith this area is not established and represents inappropriate development, contrary to Development Plan policy.

5.6. The proposals seek to introduce a modern, simple yet high quality design, taking appropriate reference from the existing built form and acting as an appropriate conclusion to development at Castle Gogar Rigg.

Not relevant if the principle of development is not acceptable, which it is not, as nothing has changed in terms of Development Plan policy.

5.7. The wider setting of Castle Gogar has been compromised over time, whether by the airport to the north and east, the tram depot at Gogar and the development of the Royal Bank of Scotland Headquarters to the south. The International Business Gateway represents the latest and alongside the Airport, most impactful, development and will further, irreparably change the wider context of Castle Gogar.

This was argued previously and was rejected convincingly by the Council.

5.8. This final piece in the jigsaw at Castle Gogar Rigg will ensure that development within the immediate environs of Castle Gogar is of the highest quality and although the Castle does not respond to, nor interact with 'The Rigg', the completion of the modern development will ensure that the Castle sits as the hidden gem amongst a very high-quality setting.

It is not an unfinished development - it is complete development, within the confines of its well defined boundaries. The houses at CGR were only allowed to increase in number as enabling development towards the improvement works to the Castle Gogar.

5.9. We have sought to add further interest to the site, with the new homes acting as an attractive introduction to the site. Whilst creating modern, attractive and marketable homes at this accessible and appropriate location, we are also ensuring the high quality setting of the wider Castle site.

This is disputed for the reasons stated in the substantive objection points stated above.

5.10. The application site and access road are under single ownership, not only ensuring the delivery of the new homes, but also (and has been the case over recent years) ensuring the maintenance and upkeep of the development. The applicant is also a resident of Castle Gogar Rigg and has already spent a great deal of time and money restoring the bridge over the Gogar Burn, itself, a listed structure. This sense of responsibility and stewardship will continue into the future.

My clients and the other existing residents at CGR have endured on-going construction work for years (presently still unfinished) at a cost, both financially to them but also in terms of the inconvenience and disturbance from construction work and HGVs. Residents have a very different view to the applicant's sense of responsibility and stewardship.

5.11. We have instructed further professional input with regards to landscape (OPEN), flooding (ITP), ecology (ITP) and tree protection (Caledonian) and transportation (SWECO) to ensure that we have assessed the pertinent issues in the determination of this application. Further limited development will have little or no impact on road capacity or safety, whilst the Landscape and Visual Analysis informed and guided the design process. Critically development will not increase the risk of flooding on the application site or elsewhere.

This is acknowledged but not all overcome the policy criteria that would be sufficient to over-ride the principal objection to new housing at this location.

5.12. The evolution of this site over the past 15 years, and following decades of decay and deterioration, has brought Castle Gogar back to its former glory as a building, the compromise

being the development within the wider site.

The restoration of the Castle has already been achieved and so no further development is either necessary or appropriate outwith the confines of the now established gated community. No further enabling development is required nor justified. As is supported by policy, further development would compromise the listed building further and the local environmental qualities of this site which is characterised by valuable open space comprising trees and important habitat.

5.13. We strongly contend that these proposals offer an appropriate and high quality development opportunity to complete this discreet neighbourhood in an attractive and high quality way and maintaining and enhancing the character of Castle Gogar Rigg.

The site is not a recognised housing site: creating high-quality sustainable development can be achieved on other appropriate sites in locations where full compliance with all Council adopted LDP policy could be achieved.

## Memorandum

**To** Head of Planning  
City of Edinburgh Council  
Planning and Transport  
Place  
Waverley Court  
4 East Market Street  
Edinburgh  
EH8 8BG

F.A.O. Robert McIntosh

**From** John A Lawson

**Date** 4<sup>th</sup> November 2019

**Your** 19/04849/FUL  
ref

**Our ref** 19/04849/FUL

Dear Robert,

### **Land 80m South of 6 Gogar Rigg**

I would like to make the following comments and recommendations concerning the above planning application for proposed development of five new detached homes.

The A-listed tower-house at Gogar was built in 1625 by Sir John Couper and has been subsequently added too over successive centuries (most notably around 1700 and again in the later 19th century) culminating in its restoration c.2005. It is however possible that the Castle site has been occupied since the medieval period, with the lands being given to Alexander Seton by Robert the Bruce in 1314. Excavations at the adjacent village of Gogar have also established occupation as early as the late-12th century with evidence for earlier Anglian and prehistoric occupation. It is currently unknown whether the estate's earlier medieval manorial hall stood on this site, latter chosen for the tower-house, or elsewhere.

Archaeological work undertaken in 2005 and 2017 by Headland Archaeology across the site of the former walled garden, cottages and as part of the Gogar Rigg development, indicated that archaeological remains out with the site of the Castle did survived. Although isolated in nature they did include the remains of 16/17<sup>th</sup> century boundary ditches associated with the Castle as well as undated postholes and pits.

Given the application's location adjacent to Huly Hill, the site has been identified as occurring within an area of archaeological potential. This application must be considered therefore under terms the Historic Environment Scotland's Policy Statement (HESPS) & Archaeology Strategy, Scottish Planning Policy (SPP), PAN 02/2011 and Edinburgh Local Development Plan (2016) Policies ENV3 & ENV9. The aim

**Lynne Halfpenny, Director of Culture, Cultural Services, Place**

City of Edinburgh Council Archaeology Service, Museum of Edinburgh, 142 Canongate, Edinburgh, EH8 8DD

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should be to preserve archaeological remains in situ as a first option, but alternatively where this is not possible, archaeological excavation or an appropriate level of recording may be an acceptable alternative.

As demonstrated by the 2005 & 2017 investigations by Headland, ground-breaking works associated with this development are likely to disturb significant archaeological remains relating the development and use of Castle Gogar. Although potentially significant it is having assessed these earlier results it is considered that such impacts would be regarded as having a low to moderate archaeological impact though one requiring mitigation.

Accordingly, it is recommended that a programme of archaeological work is undertaken prior to/ during development. This will require the areas to be stripped under archaeological control and any significant surviving remains to be fully excavated, recorded, analysed and for monitoring of other associated ground-breaking works (e.g. new services)

It is recommended that the following condition is attached to any permission granted to ensure that this programme of archaeological works is undertaken;

'No development shall take place on the site until the applicant has secured and implemented a programme of archaeological work (excavation, analysis & reporting, publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.'

The work would be carried out by a professional archaeological organisation, either working to a brief prepared by CECAS or through a written scheme of investigation submitted to and agreed by CECAS for the site. Responsibility for the execution and resourcing of the programme of archaeological works and for the archiving and appropriate level of publication of the results lies with the applicant.

Please contact me if you require any further information.

Yours sincerely

**John A Lawson**  
**Archaeology Officer**

31 May 2022

Adam Cairns  
City of Edinburgh Council  
By email

Dear Adam

**Your Ref:** 22/02294/FUL  
**Development:** ERECT 6X DWELLINGS AT LAND 80 METRES SOUTH OF, 6 CASTLE GOGAR RIGG,  
EDINBURGH  
**Our Ref:** EDI3266

The proposed development has been examined from an aerodrome safeguarding perspective and does not conflict with safeguarding criteria. We therefore have no objection to this proposal, however, have made the following observations:

### **Cranes**

Given the nature of the proposed development it is possible that a crane may be required during its construction. We would, therefore, draw the applicant's attention to the requirement within the British Standard Code of Practice for the safe use of Cranes, for crane operators to consult the aerodrome before erecting a crane in close proximity to an aerodrome. This is explained further in Advice Note 4, 'Cranes' (available at <http://www.aoa.org.uk/policy-campaigns/operations-safety/>)

### **Landscaping**

The development is close to the airport and the landscaping which it includes may attract birds which in turn may create an unacceptable increase in birdstrike hazard. Any such landscaping should, therefore, be carefully designed to minimise its attractiveness to hazardous species of birds.

Your attention is drawn to Advice Note 3, 'Wildlife Hazards' (available at <http://www.aoa.org.uk/policy-campaigns/operations-safety/>).

It is important that any conditions requested in this response are applied to a planning approval. Where a Planning Authority proposes to grant permission against the advice of Edinburgh Airport, or not to attach conditions which Edinburgh Airport has advised, it shall notify Edinburgh Airport, and the Civil Aviation Authority and the Scottish Ministers as specified in the Safeguarding of Aerodromes Direction 2003.

Yours sincerely

  
Claire Brown  
Edinburgh Airport Limited  
[safeguarding@edinburghairport.com](mailto:safeguarding@edinburghairport.com)

ERECT 6 DWELLINGS AT LAND 80 METRES SOUTH OF 6 CASTLE GOGAR RIGG, EDINBURGH  
REFERENCE NUMBER: 22/02294/FUL

The application proposes to build six detached homes at the Castle Gogar Rigg site.

The site is within the area identified for the development of an International Business Gateway as defined in the Edinburgh Local Development Plan. LDP policies **Emp 6** and **Hou 1** permit housing in this area as a component of a business-led mixed-use proposals. Since the previous application for this site (19/04849/FUL), there has not been a significant change in the relevant LDP policies.

Table 4 of the LDP – Housing Proposals still identifies an opportunity for housing development within the IBG, of which this site is part, where it would contribute to place making and sustainable development objectives.

The proposed development is not part of a business-led mixed-use proposal. There were two parts to the site in the previous application - part of the site was within an existing cluster of residential units and the remainder of the site formed an extension of this cluster to the east and south east of the site. The current application only proposes homes to the east /south east of the site. The development of this area could be complimentary to the existing cluster of residential units and seen as completion of the existing grouping.

During the previous application, The LDP supported the provision of housing in sustainable locations through Policy Hou 1 which prioritised delivery of housing land supply identified in the plan, on the proposals map and on other suitable sites in the urban area. This LDP policy still remains the same. It identifies an element of housing as a potential use within this area. The development of housing on this site, contained within an existing cluster of residential units would not prejudice the opportunity to create an International Business Gateway as supported by LDP Policy Emp 6.

The development of this site for housing is acceptable in principle subject to meeting other relevant policies of the Development Plan. The LDP proposals map shows that a small part of the site is within an area of importance for flood management. Policy Env 21 would therefore apply.

Looking at the proposals maps, the current Local Development Plan map identifies the site as the **Special Economic Area** as well as an **Urban Area**, whereas the new City Plan Proposals Map no longer identifies this as an Urban Area, and is instead an **Areas of Economic Importance and Strategic Business Centre**. On both maps, a very small section of the site has been identified as an **Area of Importance for Flood Management**, so policy Env 21 should be taken into consideration.

**City Plan Policy Place 16 West Edinburgh**

The City Plan should be an emerging material consideration. The proposal is no going to prejudice the wider strategic plan.



**By email to:**  
**adam.cairns@edinburgh.gov.uk**

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[HMConsultations@hes.scot](mailto:HMConsultations@hes.scot)

Our case ID: 300058632  
Your ref: 22/02294/FUL  
31 May 2022

Dear City of Edinburgh Council

[Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#)  
[Land 80 Metres South Of 6 Castle Gogar Rigg Edinburgh - Erect 6x dwellings](#)

Thank you for your consultation which we received on 19 May 2022. We have assessed it for our historic environment interests and consider that the proposals have the potential to affect the following:

<b>Ref</b>	<b>Name</b>	<b>Designation Type</b>
LB27092	GLASGOW ROAD, CASTLE GOGAR WITH COTTAGE, GATE HOUSE, STABLES, OUTBUILDINGS, GATE AND GATEPIERS	Listed Building

You should also seek advice from your archaeology and conservation service for matters including unscheduled archaeology and category B and C-listed buildings.

### **Our Advice**

Castle Gogar is an L-plan tower house dating from 1625 with later alterations. The building is Category A-listed, with the listing extending to include the adjacent estate structures, including walling and stable cottages. Other separately listed structures on the



estate include a seventeenth century bridge, the gatehouse and the eighteenth century gatepiers on the Glasgow Road.

We know of the 2019 refused application for 5 new detached homes, 4 of which were to be sited on the approach to the Castle, and one in what has been dubbed the 'village green'. While this application does not propose development on the 'village green', it does propose 6 detached houses sited to the south of the approach road to the Castle, and on the paddock.

In previous planning applications (15/01051/FUL and 17/00202/FUL), the Reports of Handling note the setting of the Castle now consists of the 'main tree-lined drive and the green open space enclosed by mature trees to the south of the castle' (the Paddock) due to development occurring elsewhere on the site as part of an enabling scheme to repair and reuse the Castle, which has now been concluded.

While this proposal is different in terms of design and siting of each unit within each respective plot, the effects of development on the setting of the Castle, as noted by your Council in the Reports of Handling of the above cases, would remain broadly similar.

We consider therefore that the current proposals would have a detrimental impact on the setting and historical significance of Category A listed Castle Gogar (and the stable cottages contained within its listing) and that they should be resisted.

Planning authorities are expected to treat our comments as a material consideration, and this advice should be taken into account in your decision making. Our view is that the proposals do not raise historic environment issues of national significance and therefore we do not object. However, our decision not to object should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.

### **Further Information**

This response applies to the application currently proposed. An amended scheme may require another consultation with us.

Guidance about national policy can be found in our 'Managing Change in the Historic Environment' series available online at [www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/](http://www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/). Technical advice is available through our Technical Conservation website at [www.engineshed.org](http://www.engineshed.org).



HISTORIC  
ENVIRONMENT  
SCOTLAND

ÀRAINNEACHD  
EACHDRAIDHEIL  
ALBA

Please contact us if you have any questions about this response. The officer managing this case is Mathew Reilly who can be contacted by phone on 0131 651 6828 or by email on [mathew.reilly@hes.scot](mailto:mathew.reilly@hes.scot).

Yours faithfully

**Historic Environment Scotland**

Historic Environment Scotland – Longmore House, Salisbury Place, Edinburgh, EH9 1SH

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