

Appeal Decision Notice

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Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2182
- Site address: Land adjacent to 62 Broughton Road, Edinburgh
- Appeal by Provincial Property Holdings Limited against the decision by City of Edinburgh Council
- Application for planning permission 15/02335/FUL dated 20 May 2015 refused by notice dated 15 February 2016
- The development proposed: 8 town houses with associated access improvements and ground condition survey
- Application drawings: Drgs.Nos.HHA01; 02; 03; 04; 05; 06;07; Notional Section through Site & Ramage Young Drgs.Nos. 3936/07A; 08A; 09A; 011A;012A;
- Date of site visit by Reporter: 19 July 2016

Date of appeal decision: 12 October 2016

Decision

I allow the appeal and grant planning permission subject to the 7 conditions listed at the end of the decision notice. Attention is drawn to the 3 advisory notes at the end of the notice.

The appellants have lodged a claim for expenses which is the subject of a separate decision notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are: (1) the effect of the proposed development on the character of the surrounding area; (2) the impact of the proposed houses on the amenities of local residents and; (3) whether or not the proposal would have an unacceptable impact on the local environment. In considering this appeal, I shall also have special regard to the desirability of preserving the setting of nearby listed buildings, and their boundary walls in particular, and pay special attention to the desirability of preserving or enhancing the character or appearance of the adjoining conservation area, in accordance sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

2. The appeal site is a linear strip of undeveloped land that lies between the 4 storey tenements at 32-62 Broughton Road, and the inter-war terraced houses in the cul-de-sacs of Claremont Grove and Claremont Bank on the hill above. The land extends down to a gated access on Broughton Road where BT gain access to the telephone services along the north and south boundaries of the land. The eastern boundary of the land with the gardens of Claremont Crescent is defined by a high stone wall, which is also the edge of the New Town Conservation Area, and this follows the rising contours of the land up to the Category A listed Claremont Crescent at the top of Heriot Hill. The unstable condition of this wall, possibly caused by mature self sown trees on the gardens' side, requires it to be re-built and realigned as part of the proposed development, for which listed building consent was granted on 15 February 2016 (15/02511/LBC). While the fine terrace of stone built houses in Claremont Crescent make a significant contribution to the character and appearance of the conservation area, the same cannot be said for their rear gardens, where the lower areas are devoted to car parking off Broughton Road. With the restoration of the listed stone boundary wall, I consider that the setting of the nearby listed buildings and the character and appearance of the conservation area would be preserved and probably enhanced.

3. The appeal land falls steeply from south-east to north-west down to the rear gardens of the tenement block and has been overgrown for many years with a range of self-sown scrub and multi-stem trees which, with accumulated rubbish, have now been cleared to enable more detailed land surveys to be carried out. The submitted 2002 site investigation report found no evidence of mining or other activities on the land while the successive Ordnance Survey (OS) Maps indicate that the terraced levels have remained much the same over the years, except for the recent temporary access track. There is however, evidence of made-up ground at the higher levels, possibly to provide level gardens in Claremont Grove and Claremont Bank above, and this has led to some instability on the slope, and there are some remedial concrete retaining walls in the centre of the site that indicate earlier attempts at stabilisation.

4. On the lower side, the rear gardens of the Broughton Road tenements extend about 18 metres to the boundary defined by a timber fence on a bank. From the submitted levels, the change of level up to the appeal site averages about 2.4 metres for most of the site rising to a retaining wall that ranges from about 2.7 to 5.0 metres in height at the north-eastern end of the tenements next to the proposed access. Along this boundary with the appeal site, groups of planted mature sycamore, poplar and other broad leaf trees have become established, which are quite close to the boundary with canopies spreading well beyond it, so their root systems must extend some way into the site.

Planning History

5. The appeal site has been considered for development for many years and successive owners have discussed proposals with the council. Flats were felt to be inappropriate but proposals for 2 larger houses or up to 12 smaller units were suggested. Advice from the planning officers in 2006 suggested that 8 units might be possible which encouraged the developers to commission further site investigations. The appellants consider that this advice indicated that the principle of residential development of the land has not been in dispute.

6. Vehicular access to the site has been discussed over the years and a scheme was submitted for approval, but withdrawn when the council wished it to be considered as part of the overall development. The proposal for 8 town houses on the land was presented to the council for pre-application discussion 5 years ago and, following discussions with planning and highways officers, a similar scheme went to a public presentation through the Community Council in 2010, from which various amendments were made to address the concerns raised from the consultation.

Policy background

7. As no strategic objection has been raised to the development, the development plan is the adopted Edinburgh City Local Plan (2012)(ECLP). Policy Des 1 allows development that will create or contribute towards a high quality, sustainable living environment while policy Des 3 – Development Design, sets out 10 criteria that need to be satisfied. Policy Hou4 – Development Density, seeks to ensure an appropriate density for each site and notes that higher densities will be appropriate within the central area. Policy Os1 - Open Space Provision will not permit any loss of open space unless, amongst other criteria, there will be no significant impact on the quality or character of the local environment. These policies should be read alongside with the Edinburgh Design Guidance (EDG) in respect of Development Design, which sets out how to approach the design of new developments within the historic context of the city and provides technical guidelines.

The development

8. The proposal is to erect 4 pairs of semi-detached 3 storey 4 bedroom town houses served by a new adopted road from a new access off Broughton Road. The road would have a shared surface for vehicles and pedestrians with varied surface materials to minimise traffic speeds. Each house would have its own garage and 6 visitor parking spaces would be provided, together with a turning area for service vehicles, and landscaped areas along the boundaries. Every house would have two roof terraces at 2nd floor level and shared garden ground between the houses to provide private amenity areas. I note that the existing unstable slope along the southern boundary would be retained by sheet piling with the back walls of the houses providing the lower slope retention at ground floor level. The road itself would be supported by a battered Cribloc retaining wall facing the tenement gardens which would be planted with shrubs and plants and a landscaped strip along the road edge above, all to soften its visual impact when viewed from the tenements.

1st Issue

9. Being on land behind the frontage tenements on Broughton Road, the council regards the proposal as backland development, although the site has a frontage onto Broughton Road with the potential for a vehicular access, so it is not strictly “backland”. Even so, ECLP policy Des 3 and the EDG require such proposals to be subservient to the surrounding buildings and to have a positive impact on their surroundings. Despite the steep slope across the site which has resulted in the proposed houses being set at 1st floor level of the nearby tenements, they would occupy a space behind the principal dwellings similar to the back streets of mews houses that exist around the city. Many of these former

stables and servants quarters have been successfully restored and extended without any negative impact on the frontage properties or their outlook or amenity spaces.

10. ECLP policy Des 3 requires, amongst other criteria, that development should have a positive impact on its setting in terms of height, scale and form, materials and detailing, while ensuring that the amenities of neighbours are not materially harmed. The design should be adaptable to the needs of future occupiers and ensure community security, making a clear distinction between public and private spaces and providing a safe and convenient access to and around the development. As the appeal site lies in the central area of the city, I consider that the provision of 8 houses in an area dominated by 4 storey tenements would be an acceptable density under ECLP Policy Hou 4. Although the private open space at 15% of the site area is below the requirements of policy Hou 3, this is not uncommon in city centre locations.

11. While the design of the houses is contemporary, the use of stone facings and slate roofs would enable them to blend well with the nearby existing buildings, while the plan form would allow a reasonable level of flexibility, privacy and amenity space for the occupiers, without directly harming the amenities of the closest neighbours. The 3 storey form would be considerably less dominant than the 4 storey tenements on Broughton Road, while their smaller scale and lesser height would be subservient to them. The houses would also be set below the gardens of Claremont Grove and Claremont Bank above, and they would not be seen in the context of the listed houses in Claremont Crescent. Provided this restricted and steep site can be properly stabilised and retained in the manner proposed, the appeal scheme represents an ingenious solution to the type of development possible in this location. I therefore conclude that, subject to the submission of further civil engineering details for approval, the design, scale and appearance of the proposed houses would have a positive impact on the character of the surrounding area and would, thereby, accord with ECLP policy Des 3.

2nd Issue

12. The most affected neighbours are those who live in the tenements on Broughton Road. Until recently, they have looked out onto an undeveloped site covered in self sown shrubs and trees which, with the mature trees on their own side of the boundary, have provided a natural green backdrop to the communal gardens. In contrast, the proposal would result in a service road along the common boundary set some 4.0 metres above the gardens, with 4 pairs of semi-detached houses on the far side.

13. The distance between the flats and the houses would be an average of over 26 metres which comfortably exceeds the minimum privacy distances set out in the council's SPG on Daylight, Sunlight and Privacy. In terms of daylight, the new houses are far enough away from the tenements to easily comply with the 25^o method of calculation set out in the EDG, so any overshadowing would be confined to the new road. However, even though the existing mature trees in the tenement gardens already affect the daylight and sunlight enjoyed therein, the new Cribloc retaining wall would be high enough at 4.0 metres to cast shadows over the gardens between the trees, albeit not as extensive as the 30 metres claimed by the council. While this would to a degree detract from the enjoyment of these areas, at the site inspection on a sunny afternoon in mid summer, I noted that rear boundaries of these garden areas were already in dappled shadow from the trees.

14. I acknowledge that the residents would lose their present view of this undeveloped site but, with the council's acceptance of its residential development potential, this outlook cannot be guaranteed in the future. The proposed development and landscaping, coupled with the reassurance provided by the stabilisation of the land would, with the existing mature tree cover in the gardens, result in as reasonable a prospect as could be expected in such a city centre environment. I accept that the proposal would generate traffic in an area where none exists, and that the nearest tenements would be close to the access road, but this would carry no through traffic, would only be serving the new houses and should be well screened by the existing trees and landscaping.

15. Bearing in mind the restrictive nature of the site and the difficulties of access, I can appreciate the residents' concerns on how the development would proceed and the risk of noise and dust generated during the construction process. As with all new developments the proposals are bound to intrude on the neighbours' amenities in the short term, but the building operations will be controlled by means of a condition restricting the hours of work. I therefore conclude that the proposed houses would have no lasting impact on the amenities of local residents.

3rd Issue

16. The council's main concern in the third reason for refusal is the loss of a buffer zone between the New Town Conservation Area and the tenements along Broughton Road, which has been appreciated by local residents as a green space for many years. The appeal site can be seen from very few locations, being below the Claremont Crescent houses on Heriot Hill, above Broughton Road and screened by the tenements, with only a narrow view up towards the site from its entrance. While the overgrown site has provided a green prospect for the residents in the tenements, the council have not considered it important enough to be included in the local plan as a buffer zone to ensure its preservation as an open space, so its loss would have no significant impact on the local environment.

17. Despite the concerns of some residents, the submitted amenity and wildlife survey of the site found no trees or species worthy of special protection. The bats referred to are more likely to be nesting in the mature trees in the tenement gardens, so the development of this overgrown site should have no major effect on their habitats. Furthermore, the proposed landscaping, including a "green wall" with bat boxes and swift bricks on the concrete wall at the south-west end of the site, would eventually provide new habitats for birds, bats and animals.

18. I find that, apart from the important local benefit it would bring in stabilising an unreliable sloping site, this well designed, compact development, which echoes residential mews in the city, should provide a pleasing outlook for the residents in the tenements once the landscaping has matured. I therefore conclude that, on balance, the proposal would have a beneficial impact on the local environment and thereby comply with criteria (a) and (d) of ECLP policy Os1 Open Space.

Third Parties

19. I have taken note of the concerns of local residents specifically in regard to the planning issues of the case. The main areas of contention involved the loss of the green

space and the outlook over it from the tenement apartments, fears over loss of privacy, overshadowing, the stability of the land and the engineering involved in the development and noise and disturbance during construction. In addition, the provision of the new access and the road set above the tenement gardens, with the consequent traffic generation and service vehicles causing noise and pollution, together with the possible risk to the mature trees in the tenement gardens from the construction of the Cribloc wall.

20. While most of these points have been covered in this decision or are dealt with by means of conditions, the principle of the new access has been agreed by Transport Planning subject to formal approval and, while the road would have to be built to adoptable standards, it would not be a through road but a shared surface serving only these houses, so the additional traffic and service vehicles would be no more than might be expected in similar cul-de-sac developments. I share the residents' concern over the mature trees in the tenement gardens close to the boundary, which are in good condition and contribute a high amenity value to the area. To ensure their survival, their root systems will have to be preserved by bridging over or piling in the construction of the Cribloc wall in accordance with the advice in BS: 5837:2012 "Trees in relation to design, demolition and construction".

21. I also share the reservations over the submitted 3D visuals which present a misleading picture of the development. The Heriot Hill view shows a wide road with cars parked in front of the garages when these would in fact open directly onto the road, rather like a mews, and off-street parking would be limited to the spaces provided between the houses, except in the turning bay. As a result, the development would in fact appear much narrower and the changes in level more pronounced than the visual implies.

22. Similarly, the aerial view makes the same error and suggests a wide strip of landscaping between the road and tenements' boundary, when this is more likely to be limited to the space above the Cribloc wall. In addition, while the visual has no doubt been generated from a photograph, it is difficult to appreciate the steep fall across the site and the change of level at the south-west end next to the Heriot Hill Nursery with its green wall. While I am satisfied that the submitted notional section shows a more accurate relationship between the tenement block, the proposed houses and the Claremont Grove properties above, this does not come over on the visual where the development appears to be above rather than below the existing garden fences.

Material considerations

23. The second proposed Local Development Plan is well advanced towards adoption and should be given significant weight. Policy Des 4 essentially reflects the criteria in ECLP policy Des 3 and the same applies to policy Hou 4 on Housing Density. As the site is not currently protected as an open space, policy Env 18 Open Space Protection would not apply in this case.

24. Regarding the proposed access, in order to provide better visibility splays in each direction, the bellmouth would extend beyond the footway to the outside of the residents' permit street parking area, losing at least one of the spaces across the site entrance which would presumably have to be relocated. Even so, the submission of the details of the access and service road, which have only been agreed in principle, will be covered by a condition and be the subject of an application for separate approval by Transport Planning.

Conditions

25. The council have suggested 4 conditions should this appeal be allowed, which the appellants have not disputed, and will be imposed subject to minor amendments to bring them into line with Circular 4/1998.

26. However, I considered it necessary to go back to the parties to agree 3 further conditions as set out below. In the absence of a specific ground condition survey submitted for approval I consider that, to ensure the council have an opportunity to assess the essential land retention works on which the development depends, a condition should be imposed that full details of the sheet piling, retaining walls, Cribloc walls and tree root bridging shall to be submitted to and approved by the planning authority prior to the commencement of works on site. This should also include a method statement to show how the works are to be carried out.

27. Further to my comments in paragraph 24, I note that the council's Transport Planning require further details of the proposed new access and service road as set out in their consultation response, which I also feel would be best covered by a suitable planning condition in the interests of securing a satisfactory access to the site. Finally, as mentioned in paragraph 15, to minimise any noise and disturbance during the construction period, I shall impose a condition to control the hours of work and noise on the site.

28. Although the appellants agreed to these suggested conditions, the council have objected to the first and third and requested an amendment to the second. While I have no objection to removing "public utilities" from the second condition, it is common practice to impose conditions requiring the submission and approval of further details and to limit the hours of working during construction which I consider meet the tests in the circular.

Conclusions

29. My overall conclusions are that, subject to the submission of further details for approval, the design, scale and appearance of the proposed houses would have no adverse impact on the character of the surrounding area and would, thereby accord with ECLP policy Des 3; that the proposed houses would comply with local plan policy Hou 3, and that the proposal would have a beneficial effect on the local environment with no lasting impact on the amenities of local residents and would, thereby, comply with criteria (a) and (d) of ECLP policy Os1 Open Space.

30. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

John H Martin

Reporter

Conditions...

Conditions

1. A fully detailed landscape scheme, including details of all hard and soft surface and boundary treatments and all planting, shall be submitted to and approved in writing by the Planning Authority before work is commenced on site. All planting shall take place in the first planting season and any trees or plants that die, become diseased or damaged within the first 5 years shall be replaced with species of the same type and size in the next planting season. *Reason: to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.*
2. A detailed specification, including samples where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Planning Authority before work is commenced on site, and the work shall be carried using only those approved materials. *Reason: to enable the planning authority to consider these matters in detail.*
3. No development shall take place until a scheme for protecting the residential development hereby approved from noise from the children's nursery has been submitted to and approved in writing by the Planning Authority. *Reason: to protect the amenity of the occupiers of the development.*
4. Details of surface water drainage shall be submitted and approved in writing by the Planning Authority before work is commenced on the site. *Reason: In order to enable the planning authority to consider this matter in detail.*
5. Prior to the commencement of any works, but following the excavation of trial holes to determine the load bearing sub-strata, full details of the sheet piling, retaining walls, Cribloc walls and tree root bridging, together with a method statement on how the work will be carried out, shall to be submitted to and approved in writing by the planning authority, and the works shall be carried out strictly in accordance with those approved details and method statement. *Reason: to ensure that the council have an opportunity to assess the essential retention and tree protection works on which the development depends*
6. No development shall take place until full details of the proposed new access from Broughton Road and the new road widths, gradients, materials, SUDS drainage, lighting, turning facilities and parking areas have been submitted to and approved in writing by the planning authority, and the works shall be carried out strictly in accordance with those approved details. *Reason: in the interests of securing a satisfactory access to the site*
7. During the course of the development hereby permitted, no construction work including loading/unloading of delivery vehicles, materials, plant or other machinery, for which noise is audible at the boundary of the application site, shall take place outwith the hours of 08:00 and 18:00 Monday to Friday, 08:00 and 13:00 on Saturdays nor at any time on Sundays and Bank Holidays. *Reason: in the interests of residential amenity*

Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).