
Notice of Intention by Lance R Guilford, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2109
- Site address: 154 McDonald Road, Edinburgh EH7 4NN
- Appeal by Kingsford Developments against the non-determination by the City of Edinburgh Council of an application for planning permission
- Application for planning permission 13/02458/FUL dated 26 June 2013
- The development proposed: alterations to and change of use from offices to form residential accommodation
- Application drawings (listed in schedule at the end of this notice)
- Date of site visit by Reporter: 30 January 2014

Date of notice: 25 March 2014

Notice of Intention

For the reasons given below, I am minded to allow the appeal and grant planning permission, subject to the condition and with the advisory notes listed at the end of this notice, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 (or such other legal instrument as may be agreed by the parties) covering the matters in paragraph 48 below.

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 the strategic context for the proposed change of use, the compatibility of the proposed use with surrounding uses, whether a satisfactory residential environment can be provided, and the impact on transport and parking provision in the area. In addition, the appeal building is a category B listed building, and special regard must be had to the desirability of preserving the listed building or its setting and any special features of historic or architectural interest which it possesses.

Strategic context

2. Policy 5 of the strategic development plan for Edinburgh and South East Scotland sets out the strategic requirement for the allocation of housing land. Local development plans are expected to allocate sufficient land which is capable of becoming effective and

delivering the scale of the housing requirement. In this context, paragraph 107 confirms that new housing development will contribute to the Scottish Government's central purpose of increasing sustainable economic growth. Furthermore, paragraph 113 states that, consistent with Scottish Planning Policy and with achieving sustainable development, priority should be given to brownfield sites within existing built up areas.

3. The position above is reflected in Policy Hou 1 of the Edinburgh City Local Plan where, in addition to allocated housing sites, the policy states that housing development will be permitted on other suitable sites within the urban area, provided proposals are compatible with other policies in the plan. In addition to the above, Policy Env 2 states that proposals for the total or substantial demolition of a listed building will only be supported in exceptional circumstances. This indicates the importance of retaining and finding appropriate uses for vacant listed buildings.

4. Paragraph 4.9 states that Edinburgh does not have a legacy of derelict listed buildings, and that a large number of listed buildings have been given new leases of life by sensitive restoration and adaptation to new uses if necessary. It is further stated that the loss of a listed building will only seldom be justified. I find that Policy Env 2 is an important consideration, as there is evidence that the physical structure of this listed building, whilst generally being in good condition, is deteriorating. I therefore also find that a viable new use for the building is required to ensure that this deterioration does not become worse and eventually put the building at risk.

5. The overall strategic context for the determination of this appeal, as set out in the development plan, is therefore favourable. However, it is now necessary to examine the more detailed evidence about the development plan policies that relate to the other main issues referred to above, and to balance my findings on these policies in the context of the above strategic framework.

Compatibility with surrounding uses

General assessment

6. Policy Hou 5 of the Edinburgh City Local Plan relates to the change of use of existing buildings in non-residential use to housing, and states that permission will be granted provided that (amongst other things) housing would be compatible with nearby uses. From my inspection of the site and the surrounding area, I find that this is a mixed use area, with a significant amount of residential development, including new flatted development (some currently under construction), but also educational, leisure and commercial uses. There is also a waste management facility to the north of the site. I therefore find that housing would be generally compatible with the surrounding uses in the context of Policy Hou 5, although further consideration is given specifically to the relationship of the proposed development to the Broughton Primary School and its playground below. The provision of a satisfactory residential environment is also further examined under a separate heading below.

7. The Broughton Primary School lies to the south of the appeal building and is in close proximity. It even has a connecting link, although this is closed off and does not provide

access between the buildings at the present time. I note that this position would be maintained. Both the Broughton Primary School and the appeal building were constructed as a single development to provide an educational facility in the form of a high school. In more recent years the appeal building has been used as offices, initially by the education authority. In any event, my understanding is that the current established use of the building is offices under Class 4 of the 1997 Use Classes Order. It should be noted that this may also allow an industrial process which could be carried on in a residential area without detriment to the amenity of that area.

8. It is therefore not possible (as sought within the representations) in planning terms to require the retention of the appeal building for education or community use. However, I accept that the building is still owned by the City of Edinburgh Council, and that if planning permission for residential use is not granted, separate consideration would have to be given by the council to the future use of the building. Being within a mixed use area, in planning terms there may be several alternatives.

Broughton Primary School

9. I recognise the concern expressed within the representations about the relationship of the proposed development to the Broughton Primary School, and I included a visit to the primary school at the time of my site inspection. However, I am satisfied that there would be no adverse effect on the functioning of the primary school from the proposed flats, notwithstanding that it is in close proximity to the south west elevation and is therefore overlooked by the proposed flats. Children within the primary school would generally be occupied by their school activities and the residents of the flats would have no influence on the operation of the primary school. Similarly, there would be no adverse effect on the educational centre to the south east of the appeal building.

10. I have noted the evidence relating to the possible expansion of the school, and that planning permission has been granted for a two storey building to provide 4 additional classrooms. I also noted the location of this building at the site inspection. However, and subject to my findings relating to the school playground below, I find that the possible future development of the school would not be prejudiced by the appeal proposal, because my findings in paragraph 9 above would also apply to the proposed new classrooms, and the amount of playground space would not be affected by the appeal proposal.

School playground

11. The proximity of the playground to the proposed flats is a particular matter of concern raised within the representations. However, I note that the council's Director of Children and Families has stated that it is not unusual for playgrounds to be visible from residential properties. I also agree with the statement on behalf of the appellant that it is common practice for residential uses to be co-located with schools. I do not need to visit other schools in the area to appreciate that schools and residential uses are often adjacent, particularly within a city environment.

12. However, each case must be assessed on its own merits, and in this case the south west elevation of the proposed flats, with many large single aspect windows overlooking the playground, actually forms the boundary of the playground. Residents of the flats and primary school children in the playground would be in close proximity. The key issue here is the safety and well-being of children in the playground. This matter has not been addressed in the statement by the council supporting the committee's decision to oppose the proposed development.

13. I do not necessarily agree with the position of the appellant that this is a non-planning issue. I accept that those primarily responsible for the safety of children in these circumstances are not part of the planning process, other than in consultation with the planning authority as part of the development management process. But both the development planning and development management processes need to make decisions about the environment taking into account public safety, including the safety of children.

14. At its heart in this case, and certainly within the representations, the safety issue appears to focus on potential unsupervised contact between unrelated young children and adults. I appreciate that this may be more likely to occur with a neighbouring residential use than would be the case with an office use. However, I also note the report prepared on behalf of Police Scotland following concerns raised by parents of children attending Broughton Primary School, the purpose of the report being to examine child safety in relation to the proposed development.

15. The report refers to access to and from the windows of the proposed flats having a degree of physical difficulty. In addition, it is stated that the playground is supervised between 08:50 and 18:00, and outwith these times it is considered that parents or guardians need to determine whether or not the playground is a suitable environment for their children to play, as is the case with any other public environment. The report also highlights that the proposed development may offer positive additional natural surveillance of the site helping with security and child protection fears.

16. I understand the concern expressed in the representations from parents in this case, but I essentially agree with the views expressed on behalf of Police Scotland with respect to the use of the playground outwith the times stated above. Otherwise, as long as there is appropriate supervision (when children are using the playground between the times stated above), which is a matter for the education authority to ensure, I find that there would be no increased risk to children in the playground as a result of the proposed development, and that there would be no justification in refusing planning permission for this reason. In this context, I note that the education authority has not objected to the proposed use.

Residential Environment

Housing mix

17. Policy Hou 2 states that the council will seek the provision of a mix of house types and sizes where practical, to meet a range of housing needs, including those of families,

older people and people with special needs, and having regard to the character of the surrounding area and its accessibility.

18. I agree with the council that it is important to achieve a good mix of dwelling types and sizes. Paragraph 6.12 of the local plan states that much the greater proportion of housing taking place in Edinburgh is on infill and usually brownfield sites, mostly in inner urban areas. It is further stated that, in these circumstances, market conditions strongly favour high density, flatted schemes and such developments account for much the greater proportion of consented housing. In addition, Policy Hou 4 states that higher densities will be appropriate within the Central Area and other areas where a good level of public transport accessibility exists. Public transport accessibility is further examined below.

19. However, paragraph 6.13 goes on to state that lower density housing is essentially provided for by the housing allocations within the local plan, but that nevertheless, it is reasonable to expect development generally, including urban area brownfield development, to diversify its provision and include some larger units of three bedrooms or more, each having direct access to private gardens or safe play areas for children. It is stated that the council will seek this provision in 20% of each scheme of 12 or more units.

20. Clearly, the proposed development does not comply with paragraph 6.13, but this has to be balanced against the suitability of this listed building for conversion into larger units. The building, on each of the floors, has a central corridor with offices on each side, mostly with a single aspect fronting McDonald Road or the school playground. I recognise that this lends itself to conversion into studio flats as proposed. Furthermore, there is a significant amount of residential redevelopment that has taken place (and is continuing) in the area. In this context, I note from the evidence on behalf of the appellant and the report to committee that there is a predominance of two and three bedroom flats in the area, and so the appeal proposal may actually have the effect of increasing the overall mix of housing in the area. I do not therefore give great weight to the need to comply with the terms of paragraph 6.13 in this particular case.

Open space

21. Policy Hou 3 states that planning permission will be granted for development which makes adequate provision for open space to meet the needs of future residents. Standards are set out for mainstream flatted development, but these do not apply to housing built for occupation by particular groups, which I find would essentially be the case here. I accept that there is limited external open space, and the rooftop open space, whilst being additional amenity space, does not necessarily fully compensate for this. However, on balance, I find that this is not a significant consideration in the determination of the appeal, particularly since the site is within a city, and the limited open space must be balanced with my other findings relating to the residential environment.

Amenity

22. Policy Hou 5 of the Edinburgh City Local Plan referred to in paragraph 6 above also requires a satisfactory residential environment in terms of amenity. In this context, the

proposed studio flats are small, but they appear to meet the minimum standards set out in the Edinburgh Design Guidance, which is not part of the development plan but is nevertheless a material consideration which informs consistency or otherwise with the development plan. I find the design to be innovative, making the most of the limited floor space by using the height of the ceilings to create a mezzanine floor level in order to provide sleeping accommodation, with living, kitchen and bathroom accommodation on the main floor level.

23. I recognise that the design guidance also states that single aspect dwellings should not make up more than 50% of the overall dwelling numbers, but this guidance (as well as not being part of the development plan) is informative rather than prescriptive. In this case the single aspect windows are large and provide sufficient daylight and sunlight. I find on this matter that the proposed development is acceptable in terms of providing a satisfactory residential environment notwithstanding the provisions of the design guidance.

24. A further issue is the proximity of the school playground. In terms of residential amenity I do not consider overlooking from the school playground to be a significant concern. The playground is only used at specific times, so its use is not constant. I accept that there would be some use of the playground in the evenings, and prospective buyers may not be aware of that. This could however be brought to the attention of prospective buyers when the flats are sold. In any event, prospective buyers of the flats would be well aware of the proximity of the school playground because it already exists, and it is not unusual for school playgrounds to be used outwith normal school hours.

25. I do not consider that the single aspect of the flats is of particular concern in this respect. For the flats facing the school playground, prospective buyers would be aware that there is a single aspect onto the playground. I also do not consider that a condition relating to the type of glass would be appropriate. This would be a matter for the residents of the flats in the context of the building regulations. In overall terms, I find that the use of the playground is not likely to significantly intrude upon the privacy of residents within the flats.

26. I note that the environmental assessment officer of the council has expressed concern with respect to noise from traffic and the shared amenities provided for residents (including the gymnasium in the basement). However, I have noted the conclusions of the noise and vibration assessment prepared on behalf of the appellant, and in the circumstances, I consider that the frontage onto the main roads would be no different to many other residential flats within the city, where traffic noise would simply be an accepted part of living within such an urban area. I do not consider that the single aspect of the flats is of particular concern in this respect either.

27. With respect to noise from shared amenities, this would be no more than is to be expected within this type of accommodation, and I agree with the stated position on behalf of the appellant that this is a matter to be addressed through the communal management of the proposed flats. Noise from the playground, which is actually not referred to in the environmental assessment officer's response, could be intrusive when this is in use, and I find that this would to some extent have an adverse effect on residential amenity. However,

the last sentence of paragraph 24 above also applies here, and I find that any adverse effect on residential amenity is not a significant consideration.

28. Paragraph 6.21 of the local plan states that the recycling of buildings achieves sustainability goals and provides the essential means by which the historic character of different localities can be maintained. It can help to create the high density, mixed use environments which are appropriate for central sites. I consider that the residential amenity to be expected in a mixed use area of a city is not the same as that within a more secluded, purely residential area. In this context, and on balance, I find that the amenity afforded to residents of the proposed flats would be sufficient in the context of Policy Hou 5. In terms of the general amenity of the area, residential use is likely to be as acceptable, if not more acceptable, than the established office use would be.

Waste disposal and recycling

29. Policy Des 6 of the Edinburgh City Local Plan refers to the need for the provision of facilities to encourage recycling of household and other waste, and the Edinburgh Design Guidance sets out standards for waste and recycling provision. I note that the Urban Key Management Plan commits to a waste management plan which has been drawn up to be in line with the Waste (Scotland) Management Plan 2012. This includes waste and recycling facilities, and I find that these facilities would be reasonable given that the development relates to small studio flats. I also note that the council has not taken issue on this matter.

Security

30. I note that detailed advice on security is provided in the consultation response from Police Scotland dated 8 July 2013, and I have asked for the main parties' further views on this matter. I note that the council, notwithstanding that it is opposed to the proposed development, takes no issue on this matter and does not consider that the issues raised in the response from Police Scotland are directly relevant to the determination of the appeal. I therefore find that it is the responsibility of the developer in the circumstances to ensure that appropriate security is built into the design and layout of the proposed flats, taking into account the views expressed by Police Scotland.

Transport and Parking

Transport assessment and sustainable transport

31. Paragraph 9.7 of the Edinburgh City Local Plan states that a comprehensive transport assessment must be prepared and submitted with planning applications for development proposals generating a significant amount of travel. Policy Tra 1 states that the suitability of a proposal will be assessed (amongst other things) having regard to the accessibility of the site by modes other than the car, and the impact of any travel demand generated by the new development on the existing road and public transport networks. In general, it is stated that applicants should demonstrate that the location proposed is suitable with regard to access by public transport, cycling and walking and that measures

will be taken to mitigate any adverse effects on networks and bring accessibility by non-car modes up to acceptable levels if necessary.

32. I note that no transport assessment has been submitted with respect to this proposed development, and it appears that the council has not taken issue on this matter. However, the general premise upon which this proposed development is being pursued is that of low car ownership and extensive use of walking, cycling and public transport. This approach is consistent with the provisions of Policy Tra 1 set out above.

Road network and road safety

33. Concern is expressed within the representations about the effect of the proposed development on the local road network, and the resulting road safety implications of the proposed development. From my inspection of the site and the surrounding area, I find that Broughton Road and McDonald Road are both quite busy transport routes. However, the level of car ownership is likely to be less than would be the case for mainstream flatted dwellings, and there is no evidence to suggest that the generation of additional vehicular traffic from the proposed development would have a significant adverse effect on the local road network, or on road or pedestrian safety.

Cycle provision

34. Given the type of residential units proposed, I would expect significant use of walking, cycling, and public transport provision in the area. Policy Tra 5 states that planning permission will be granted for development where the cycle parking and storage provision to be made complies with the standards set out in supplementary planning guidance. Whilst not being part of the development plan, this supplementary planning guidance is nevertheless a material consideration.

35. This guidance is within the parking standards for development management, and states that residential developments need to have high quality cycle parking. Normally, parking for at least two bicycles is considered a reasonable requirement, but in the circumstances of this development, I consider that one would be sufficient, and that is what is provided. The majority of the cycle racks are located within the basement, with further provision outside the building but within the curtilage of the site. I find that in the circumstances the proposed cycle provision is consistent with Policy Tra 5, and I am satisfied that the concerns which were originally raised by the council's acting Head of Transport in the consultation response dated 26 July 2013 have been met following the scheme's amendment to meet the policy requirements for cycle parking.

Public transport

36. The site is reasonably well served by public transport, although I note that most bus services are on Leith Walk, which is some 650 metres from the site, involving up to a 10 minute walk. This is beyond the recommended distance stated in Annex B of Planning Advice Note 75. This means that the location does not have ideal access to public transport, and this may result in more car ownership amongst residents than is predicted.

Car Parking

37. Policy Tra 4 states that planning permission will be granted for development where the car parking provision to be made complies with and does not exceed the parking levels set out in supplementary planning guidance. It is also stated that lower provision will be pursued subject to consideration of a number of criteria set out in the policy. These include the effect on the amenity of neighbouring occupiers, accessibility to public transport routes, availability of on-street parking, low car ownership within the proposed flats, and the provision of complementary measures including cycle provision and car sharing.

38. The relevant supplementary planning guidance is again the above mentioned parking standards, and this states that up to 33% parking provision should be provided for studio flats within this area. There is a relaxation for affordable housing units, but only a proportion of these units would be likely to meet the required definition of this as set out Policy Hou 7 of the local plan, although I accept that studio flats are a type of accommodation that is likely to be inherently affordable. I also accept that some of the provisions in the paragraph above apply to some extent to the proposed development.

39. However, from my inspection of the surrounding area I note that on-street parking is restricted to permit or ticket holders and is generally quite busy. I note that residents of the 73 proposed flats would be entitled to 1 resident permit per flat, which essentially sets out the maximum parking requirement that is likely to be generated. I accept that it is unlikely that this maximum would occur, but I also consider that the appellant may have underestimated the take-up of resident permits, particularly given my findings in paragraph 36 above. I note the arguments on behalf of the appellant relating to the existing office use, but none of the users of the offices would be eligible for resident permits on this basis.

40. With most of the bus services being up to a 10 minute walk away, and not everyone being inclined to cycle, I consider that there could be a significant demand for additional resident permits, which would adversely affect the amenity of neighbouring occupiers to some extent. The proposed car sharing is limited in extent. I recognise that the council's transportation service is content with the proposed development in terms of its provision for transport, including the lack of dedicated parking provision, but this has not been accepted by the planning committee, and on balance I find that the proposed development is not in the circumstances consistent with Policy Tra 4.

Conclusions relating to the development plan

41. The proposed development is consistent with the overarching principles set out in Policy 5 of the strategic development plan for Edinburgh and South East Scotland, and in Policy Hou 1 of the Edinburgh City Local Plan. With respect to my examination of the proposal in the context of Policies Hou 2, Hou 3 and Hou 5, there are some elements of concern identified above, but these are outweighed by my overall findings of consistency with respect to these policies. The proposal is generally consistent with the provisions of Policy Tra 1 and cycle provision is consistent with the provisions of Policy Tra 5.

42. The most significant concern is my finding of inconsistency with Policy Tra 4 with respect to parking provision, but this is on balance, and in the circumstances I find that this is outweighed by the consistency of the proposal with the other relevant policies referred to above. In particular, the preservation of this listed building for an acceptable use within the city outweighs the parking standards normally applied to such development, given that provision is made for sustainable forms of transport (particularly cycle provision), and affordable housing. Again on balance, and giving appropriate weight to all of the elements of the development plan examined above, I find that the proposal is consistent in overall terms with the provisions of the development plan.

Effect on the preservation or setting of the category B listed building

43. I note that listed building consent has already been granted for the proposed alterations. I am satisfied in the circumstances that the proposed alterations to the building sufficiently preserve the building and its architectural features. The setting of the building would be enhanced by the proposed open space and the maintenance of the curtilage of the building which would result from the proposed development.

Other material considerations

44. There are no other relevant material considerations that have not already been examined above. Supplementary guidance, including the Edinburgh Design Guide and the parking standards, is used to inform the assessment of the proposal against the relevant development plan policies, and so this has already been sufficiently considered above, and does not further materially alter my findings about the consistency of the proposal with the development plan.

45. The Edinburgh City Local Development Plan, which has not yet been the subject of examination on behalf of Scottish Ministers, carries limited weight and does not affect my conclusions relating to the current development plan referred to above. The relevant matters within Scottish Planning Policy are referred to in the strategic development plan examined above, and the relevant matters raised within the representations have already been examined above.

Overall conclusions

46. I conclude, for the reasons set out above, that the proposed development is consistent in overall terms with the relevant provisions of the development plan and that there are no material considerations which would justify the refusal of planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions above.

Conditions and planning obligation

47. I agree with the proposed condition relating to archaeological work, but I do not consider that it would be appropriate in the circumstances to impose a condition requiring opaque windows to be installed within the residential units. This is not necessary in the

context of Circular 4/1998 in view of my findings on residential amenity above. Nor do I consider that it is necessary to impose a condition requiring all apartments to be a minimum of 36 square metres, or a condition relating to the implementation of the Urban Key Management Plan, notwithstanding the appellant's commitment to these matters.

48. However, I find that a planning obligation should be completed in order to make provision for affordable housing in the context of Policy Hou 7 of the Edinburgh City Local Plan, and to secure appropriate financial contributions towards the City Car Club (in the general context of providing sustainable transport related to the development under Policy Tra 1) and the Edinburgh Tram Project (in the context of providing sustainable transport related to the development under Policy Tra 3).

49. I will accordingly defer determination of this appeal for a period of 3 months to enable the relevant planning obligation (either an agreement with the planning authority under section 75 of the Town and Country Planning (Scotland) Act 1997 or such other legal instrument as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 3 month period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

Lance R Guilford

LANCE R GUILFORD
Reporter

Condition

No development shall take place until the appellant has secured the implementation of a programme of archaeological work, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the planning authority, having first been agreed by the city archaeologist.

Reason: In order to safeguard the interests of archaeological heritage.

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).)

Schedule of drawings

Location plan: OS(00)001

Existing block plan: GA(EX)001

Existing plans and elevations: GA(EX)002-0013

Proposed floor plans:

GA(00)000revA, 100,101, 200, 201,300, 301, 400revC

Proposed site plan, sections and elevations:

GA(90)001revA, (20)001revB, (21)001revB, (21)002revA

