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Decision by Allison Coard, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2212-1
- Site address: 116 Colinton Road, Edinburgh, EH14 1BY
- Appeal by Eastern Properties (Scotland) Ltd against the decision by The City of Edinburgh Council
- Application for planning permission 16/04062/FUL dated 19 August 2016 refused by notice dated 3 August 2017
- The development proposed: demolition of existing garage and re-development for 37 units, access, parking, associated infrastructure and landscaping (as amended)
- Date of site visits by Reporter: 2 July 2018 and 30 August 2018

Date of appeal decision: 9 October 2018

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## Decision

I dismiss the appeal and refuse planning permission. The appellants have submitted a claim for expenses which is the subject of a separate decision.

## Preliminary

A decision on this case was previously issued under case reference PPA-230-2212. However following a successful appeal to the Court of Session the appeal has now been considered afresh as set out below. Given that the decision of the court and the previous reporter's conclusions represented new information a procedure notice was issued inviting all parties to make further comments. In addition an accompanied site visit was held.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. In this case the main issues are whether:
  - the layout, design and height of the proposal is appropriate to this location and in relation to the amenity of neighbouring housing; and
  - the stated contribution to off-site provision of affordable housing is appropriate.

### Location, layout and design.

2. The site has a frontage onto Colinton Road. It currently includes a large building over two levels and a rear court laid in tarmac formerly associated with car showroom use.



The character of the area is predominantly residential although the frontage of the site is adjacent to a small parade of retail and commercial uses.

3. I agree with the appellant that the vacant buildings on the site currently fail to make any positive contribution to the streetscape or character of the area. There has been some demolition works and in the absence of development or alternative use it is assumed the buildings could fall into further disrepair.

4. The site is in an accessible and sustainable location relative to existing facilities and bus links. This indicates the potential to support a relatively high density of housing. The proposal would enable infill development and I consider that the principle of residential use in this location would be acceptable and in accordance with Policy Hou 1 of the Edinburgh Local Development Plan. However compliance with the local development plan would also depend on assessment against the relevant detailed design considerations associated with Policies Des 1, 4 and Des 5.

5. Policy Des 1 states that proposals should contribute to a sense of place and that design should draw on the positive characteristics of the area and avoid design that would damage that character. Policy Des 4 requires demonstration of a positive impact on its surroundings including the character of the surrounding townscape with regard to height and form, scale and proportions, position of buildings, material and detailing. Policy Des 5 relates to amenity including of neighbouring development and states that this should not be adversely affected and that future occupiers have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy or immediate outlook. In addition the council's Edinburgh Design Guidance document is a relevant material consideration.

6. The Edinburgh Design Guidance reflects the relevant development plan policies but also provides detailed technical advice on the assessment of loss of daylight, overshadowing and privacy. For the assessment of any loss of daylight this advises the projection of a line from the ground floor level of the existing property at an angle of 25 degrees. If the projected line exceeds the height of the proposed building then reasonable levels of daylighting are assumed to be retained. On this basis I note that the appellant's sectional drawings demonstrate that any consequent loss of daylight would not breach the technical threshold of acceptability.

7. Overshadowing is distinguished from loss of daylight and requires consideration of the orientation of the affected garden or property. The use of the garden and its size should also be taken into account. The council's guidance advises a 45 degree line is utilised in this instance and is drawn from the boundary at a height ranging from 2-4 metres above ground level. This depends on the orientation of the boundary in relation to the potentially affected garden. Half of the area of new garden should be capable of receiving potential sunlight during the spring equinox. The sectional drawings for this proposal assume the position of the sun in March and projection of the associated angles demonstrate that the proposal again achieves the technical threshold of acceptability.

8. On page 78 the Edinburgh Design Guidance advises that gardens longer than 9 metres are encouraged to enable housing to be extended over time and in the interests of the character of the area. I could otherwise see no reference in the guidance to a minimum separation distance between houses in terms of privacy although I note the appellant refers

to 18 metres as a guideline. In any event, I accept that there would be no issues arising in terms of direct window to window privacy given minimum separation distances of at least 20 metres would be achieved. I note that window privacy rather than rear garden privacy, is the focus of the council's guidance. However, the guidance also states on page 65 that there may be higher expectations in suburban areas and that the pattern of development will help to define appropriate privacy distances.

9. Future Block B residents enjoying their walk out balconies at heights of up to 9 metres would be looking down into neighbouring gardens with established boundaries only 9 metres away. I consider the height differential and use of outdoor living space would undoubtedly result in a reduction in established garden privacy. For Block C this effect would be mitigated by the orientation of the building, the staggered design, the absence of walkout balconies as well as the length of the established gardens. However, such mitigation is not applied to Block B which runs parallel and within 9 metres of rear garden boundaries so only just achieves the set-back referenced in the council's guidance. That said, I accept that privacy could be secured at a level not untypical of what might reasonably be expected in a higher density urban environment. Consequently, I do not consider that this matter alone would justify refusal.

10. In addition to the detailed considerations above the relevant development plan policies described in paragraph 5 above apply wider design considerations. In this context, I have carefully considered the proposals in the context of the established character of the surrounding area.

11. Proposed Block A is notably taller and of a more contemporary design than other buildings on Colinton Road. However there are some properties of a comparable height and there are a variety of architectural styles in the vicinity. I appreciate that the design concept could achieve a distinctive frontage at a height and scale reflecting the post office which marks the other end of the shopping parade. Whilst different in design I do not consider that Block A would be unacceptable in terms of its relationship with neighbouring property or in the context of the existing varied character of Colinton Road. The proposed materials show some continuity with the rest of the streetscape with colours and modern materials reflecting the established use of stone, render and slate roofs. Consequently, when assessed in isolation I consider that Block A could achieve compliance with the relevant design policies of the local development plan.

12. However, in my opinion development of the area to the rear of the Colinton Road frontage is more challenging given the existing height, pattern and scale of development prevalent in the adjoining residential area to the north, west and south. The submitted sections serve to illustrate issues of comparative height and proximity. Section 2.1 of the Edinburgh Design Guidance states that buildings that are clearly higher than their neighbours should be avoided to protect the character of the area. The underlying premise in the guidance is that buildings should be sensitively scaled although there is some recognition of the scope for taller architectural features in exceptional circumstances. Section 1.5 states, in relation to density, that back-land development must be designed to ensure that any proposed building is subservient to surrounding buildings and does not have an adverse impact on spatial character.

13. In this context Block C would be 10 metres in height above the ground level of the appeal site and Block B would be 12 metres high. The proposal would be visible between and above the houses and gardens on surrounding residential streets to the south along Craiglockhart Road North, to the west along Craiglockhart View and to the north along Colinton Grove. These blocks would uncharacteristically introduce a significant massing of high buildings to the rear of any established street frontage including onto currently undeveloped areas of land.

14. Comparison of ground levels and proposed ridge heights in the submitted sections enables assessment of the height and scale of the proposed blocks relative to surrounding properties along Colinton Grove, Craiglockhart View and Craiglockhart Road North. These surrounding properties reflect a typically more suburban pattern, scale and height of development where properties are one, one and a half and two storey in height. These houses are generally 5-8 metres high but the height differential between the existing and new development would be accentuated where there is a marked change in levels. This change in levels is particularly pronounced along Colinton Grove where the current parking area on the appeal site is some 3.4 to 4 metres above the established rear gardens.

15. This difference in ground level is illustrated in section JJ from Colinton Grove which, as confirmed on site, is up to a maximum of 4 metres below the development site. Consequently, the ridge height of block C would be up to 14 metres above the rear garden level at 11 Colinton Grove. The ridge height at number 11 would in comparison be some 7.5 metres below the ridge height of Block C. At its nearest point Block C would be 9 metres from the rear garden of 11 Colinton Road although the separation distance between the existing house and new building would be some 33 metres.

16. The tree planting along some of the rear gardens of Colinton Grove, which is some 13 metres in height above the appeal site, is in excess of the height of the proposed buildings. This planting currently masks the existing buildings and views into the appeal site. However these trees are within existing gardens and could be felled in the future. There is also an intervening wall along this boundary which reflects the change in levels.

17. Separation distances between Block C and any established residential property are at a minimum of 20.9 metres as illustrated in section EE from Craiglockhart View where the change in levels is less marked at around 1.92 metres. Consequently the comparative height difference here would be 5.27 metres at ridge height and 11.45 metres from the existing garden level. In this section the gable of proposed Block C is 9 metres from the established garden boundary.

18. Whilst the change in levels is less marked along Craiglockhart View and Craiglockhart Road North Block B is some 12 metres in height from the established ground level on the appeal site. There are established garden boundaries along Craiglockhart Road North at a distance of 9 metres from the rear elevation of Block B and on Craiglockhart View the nearest garden boundary is 12 metres from the proposed gable of this block. Intervening distances between the houses and the proposed blocks are at a minimum of just over 22 metres.

19. Along the gardens to the rear of Craiglockhart Road North and the flats on Colinton Road there is an existing wall associated with the car showroom and this currently creates

an enclosed character to some of these properties. However proposed Block B would be significantly higher. Despite a set-back of 9 metres from garden boundaries I consider the proposal would accentuate the current sense of enclosure to a degree that would appear oppressive and over-dominant to the detriment of the amenity of these properties. This is illustrated in section DD where the house on Craiglockhart Road North is 26 metres from proposed Block B and the difference between the garden level at its lowest point and the proposed ridge height would be between 10-12 metres. The difference in ridge height between the single storey property and the proposed 4 storey block here is reduced to 4.2 metres due to the change in levels between the house and its garden.

20. Section K-K illustrates the comparison between the nearest property on Craiglockhart View where the gable of Block B would be 12 metres from the garden boundary. The buildings would be 22 metres apart and the difference in ridge height 5.76 metres. The difference in height between the existing garden and the proposed ridge of Block B would be some 13 metres.

21. Given my conclusions above on the significant differences in height and scale relative to the surrounding lower level residential area I consider that Blocks B and C would be to the detriment of the established character and amenity of this suburban area. My concerns that the proposal would not be sensitively scaled relative to the adjoining residential area are illustrated through the following sectional drawings:

- Block C: section J-J which is representative of sections I-I and H-H from other properties on Colinton Grove and Section E-E from Craiglockhart View; and
- Block B: sections C-C, D-D and K-K from Craiglockhart View and Craiglockhart Road North.

22. I accept that significantly higher buildings which represent an architectural statement of visual interest may be justified in exceptional circumstances as suggested in Section 2.1 of the Edinburgh Design Guidance. However, I do not consider that such circumstances apply to this scheme given its nature and infill location relative to an area of low density and suburban character. Whilst there would be some townscape benefit in redevelopment of the site I do not consider this would justify inappropriately high buildings on the area to the rear of Colinton Road. Consequently I find conflict with Sections 1.5 and 2.1 of the council's design guidelines.

23. My assessment must focus on the acceptability of the design in the context of the relevant development plan policies and other material considerations. In that context I do not reach any conclusions on what might otherwise prove appropriate. Nevertheless my conclusion is that the current proposal does not achieve an appropriate scheme overall. In reaching this conclusion I have taken account of the current condition of the site and the obvious benefits of re-development.

24. I accept the existing circumstances of the site would be improved and that the car showroom buildings are already a discordant feature in the townscape. However, I consider the focus of the design policies in the development plan and the advice in the Edinburgh Design Guidance is on the new proposal and how it responds to its surroundings rather than on whether it is better or worse than what was on the site before. Whilst I accept there is no specific local vernacular the combined effects of the extent, scale and

proximity of the new proposals relative to the surrounding residential area are, in my view, sufficient to tip the balance of acceptability.

25. I understand that the proposal is the product of an iterative design process and that significant attempts have been made to mitigate the impact of the proposal on a site which is undoubtedly challenging to develop at the density proposed in this appeal. In this context I consider that the staggered design of Block C serves to mitigate its impact to an extent and that the proposed separation of the blocks including the introduction of green space would go some way to soften the appearance of the development as a whole. I have no concerns about the use of materials where the use of glass and light coloured walls complement the contemporary design.

26. Rather my concerns as explained above are focussed on the scale and location of Blocks B and C. In that respect I have carried out my own assessment rather than placing weight on what may have been agreed at officer level through the course of the council's assessment of the planning application. The Edinburgh Design Guidance is a relevant consideration but it is non statutory guidance. The technical thresholds and advice it provides are a useful guide in assessing acceptable levels for daylighting, overshadowing and privacy. I accept above that the proposal achieves compliance with much of this technical guidance.

27. However, paragraph 151 of the local development plan clarifies that its guidance is not to be used as a template for minimum standards. In addition, I must also consider the specific context of this site and the overall impact of the proposals relative to the wider design objectives as set out elsewhere in the council's guidance bearing in mind its status and that its purpose is to reflect and support the relevant design policies of the local development plan.

28. Drawing on all of the above I find conflict with:

- Policy Des 1 as the proposal when taken as a whole would not reflect the positive characteristics of the area or avoid design that would damage that character in terms of height, layout and scale;
- Policy Des 4 as the proposal would not achieve an overall positive impact on its surroundings including the character of the surrounding townscape with regard to height and form, scale and the relative position of buildings; and .
- Policy Des 5 as the proposal would appear dominant and overbearing in relation to adjoining properties and the established pattern of development with a consequent detrimental and unacceptable impact on current levels of residential amenity which are a valued characteristic of this suburban area.

### Affordable Housing

29. As this site is for more than 12 units Policy Hou 6 of the Edinburgh Local Development Plan requires that the proposal should include provision for 25% of the total number of units to be for affordable housing. In addition as the proposal is for more than 20 houses such provision should normally be on site. Provision elsewhere is referenced in the text supporting this policy at paragraph 232 but only for sites of less than 20 houses or where there are exceptional circumstances.

30. I consider the use of “normally” in the wording of Policy Hou 6 indicates there are some circumstances where an alternative would be appropriate. This conclusion is further supported by the associated reference in the supporting text to “exceptional circumstances”. In addition Paragraph 233 of the supporting text references planning guidance on affordable housing requirements and that the details of provision will reflect housing need and individual site suitability. These are stated to be matters for agreement between the developer and the council. Other than that there is no precise definition or guidance in the local development plan to define such circumstances or the scale of any contribution.

31. The council has confirmed that it has no current statutory guidance on affordable housing. Rather it has published non statutory advice on Affordable Housing which was updated in October 2017. Page 2 of this document clarifies that the document provides guidance on the use of Policy HOU 6 of the Edinburgh Local Development Plan. Given the timing of this update and its reference to the current development plan I have assumed its relevance and that the submitted Guidance on Developer Contributions and Affordable Housing dated 2015, which references the previous local development plan, has been superseded. In any event I understand that the guidance remains relatively unchanged.

32. The council’s guidance re-iterates a preference for on-site provision of affordable housing. It also references other flexible alternatives in circumstances where subsidised affordable housing is not viable or feasible. The references to commuted payments are relevant to this case as the appellant proposes a financial contribution towards delivery elsewhere. A methodology is provided for the calculation of the financial contribution based on the total number of units, the land value per unit (based on independent valuation) and a corresponding 25% contribution. I note that the council’s case refers to the cost of the provision of affordable housing units. However its published methodology relies on the land value per unit rather than the total cost of housing provision.

33. I am aware from the submissions that the council has also prepared draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery dated January 2018. Once approved this would form part of the statutory development plan to be read alongside the relevant policies of the local development plan. Page 1 of this guidance references the associated development plan policies. However, I note there is no specific reference to affordable housing or to Policy Hou 6.

34. Section 3 provides general guidance on viability in the context of abnormally high site preparation costs. In addition, it references the need for developers to take account of the council’s policies in bidding for land and that the council will not accept over-inflated land values a reason for reducing contribution requirements. It goes on to state that financial viability will be assessed in accordance with the Royal Institution of Chartered Surveyors Guidance Note, Financial Viability in Planning (2012).

35. In carrying out its assessment of this application the council’s officers had commissioned a report and valuation of the site dated 24 March 2017 (the Ryden’s Report). This questions the viability and profitability of the site and states that the unit costs for affordable housing on site was likely to prevent interest from a social landlord or housing association. The purchase cost was determined through a competitive process at closing

date and the construction costs are stated as expensive due to the site's characteristics and the quality of the build.

36. The report concludes that due to the land price and profit share arrangement the proposal appears unlikely to support any level of developer contribution. It references the potential to re-negotiate the purchase price but does not indicate that this would be feasible given that the purchase is concluded and as it results from a competitive bidding process. The report suggests that a relatively high price was paid for the site.

37. Informed by these conclusions the council's Housing and Regulatory Services responded to the application on 23 March 2017. It accepts that on site affordable housing through an affordable housing provider was not feasible due at least partly to costs. Similarly the provision of an alternative means of provision referenced as "Golden Share" was viewed to be unfeasible as the costs exceeded the threshold for such provision. Consequently a commuted sum was advised to support provision in the same or adjacent ward based on 9.25 units at £31,000 per unit. I note from the information provided to me that the negotiated contribution per unit would still fall short of a contribution that would reflect the unit land cost as advised in the council's published guidance.

38. Against this background I accept the proposal does not reflect the priority to be given to on site affordable housing delivery. In addition the alternative commuted sum is less than indicated through the council's currently published methodology. However the council has not presented anything conclusive to counter the view of its own officers or the independent advice it commissioned to demonstrate that either on site provision nor a higher contribution would be feasible in the circumstances of this site. I agree in principle with the council that it is important for known contributions to be factored into any development appraisal and reflected in the purchase price. However Policy Hou 6 applies flexibility and indicates scope for negotiation. Consequently, on balance and in the particular circumstances of this appeal I consider that compliance with Policy Hou 6 is sufficiently demonstrated.

### Other issues

39. I visited the flatted development at Meggetland Square which is referenced by the appellant. It is of comparable scale and a contemporary design and I accept that it is widely visible in the area. However unlike the appeal site it benefits from a setting adjacent to the canal and sports ground. It is not on elevated ground or in such proximity to traditionally scaled residential properties. Given that the relative settings are not directly comparable I do not consider that this existing development is a precedent which justifies these current proposals. In any event the current appeal must be assessed on its own merits.

40. I understand the concerns of local residents about increased traffic and current problems with on street parking in the area. However there is no indication that the level of on-site parking is insufficient and there is no objection from the council as Roads Authority. Given the sufficiency of on-site parking including for bicycles and disabled access I find no conflict with Policies TRA 2 (private parking) and TRA 3 (private cycle parking).

41. On the matter of archaeology there is no evidence to indicate any significant effects in this respect. Similarly the submitted flood risk assessment has raised no significant

issues regarding flooding or drainage subject to the appropriate mitigation. This conclusion is supported by the council's flood prevention team and by the Scottish Environment Protection Agency.

42. I can understand the view from some local residents that some element of retailing should be preserved on the street frontage. However I also appreciate the difficulties in securing occupiers and I have not been directed to any policy or other guidance that would restrict the introduction of residential use on this frontage. I note that a number of the design concerns I have raised above in relation to the height and proximity of Blocks B and C are reflected in the 69 representations received through the planning application process including by the local community council and as re-iterated in subsequent submissions through this appeal process.

43. I have carefully considered the other material considerations referenced by the appellants including in respect of Scottish Planning Policy and advice and the potential contribution to sustainable development. Whilst I accept some support can be derived from these documents in terms of the re-use of the site, its accessible location and a distinctive design I find none of these considerations sufficient to overcome my concerns above.

### Conclusion

44. I agree with the appellant and the previous reporter that this case is finely balanced. However it is clear to me in balancing all the considerations above that the relationship between the proposals and the adjoining residential area in terms of location, height and scale is not sufficiently addressed by the current scheme. Given the consequent policy conflict as summarised in paragraph 28 above my conclusion is that the proposal is not in accordance overall with the relevant provisions of the development plan. The current condition of the site and the benefits of redevelopment to provide housing including a contribution to affordable housing are important considerations. However, my assessment is that these considerations are insufficient to otherwise justify approval.

*Allison Coard*

Reporter