



**APPLICATION FOR PLANNING PERMISSION (13/00548/DPP) FOR THE
ERECTION OF DWELLINGHOUSE (PART RETROSPECTIVE) AT LAND
ADJACENT TO 7 WESTFIELD PARK, DALKEITH**

Report by Head of Planning and Development

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of a dwellinghouse. The application site is located between Westfield Drive to the north and Westfield Bank to the south. There has been seven letters of representation and a consultation response from Scottish Water. The relevant development plan policies are RP20 and DP2 of the Midlothian Local Plan. The recommendation is to refuse planning permission because of the significant detrimental impact that the development will have on the amenity of neighbouring residents.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site is a former Council owned lock-up garage site located between the residential properties on Westfield Bank and Westfield Grove/Westfield Drive, Eskbank. The garages have been removed and a partially erected dwellinghouse has been constructed on the site. The site has been left in an unkempt condition and the frame of the partially constructed house has been left exposed to the elements.
- 2.2 The application site is long and narrow, measuring 475sqm in area. The application site has a road frontage on Westfield Park. There is a mains sewage pipe running through the site in an east to west direction.
- 2.3 There are residential properties located on all sides of the application site. The site is accessed from Westfield Park to the west.

3 PROPOSAL

- 3.1 The applicant proposes to erect a two-storey dwellinghouse on the application site. The building has been designed as a two storey flat-roofed dwellinghouse, in a contemporary style.

- 3.2 The street fronting elevation includes a large garage door at ground floor level. The garage within, which runs the length of the building, is to allow a maintenance area and access to the mains sewage pipe, which runs along the length of the application site in an east/west direction.
- 3.3 The majority of the living accommodation is on the upper floor of the building and comprises a lounge, kitchen, bathroom and two bedrooms. The ground floor includes the, aforementioned, garage and a toilet and utility room. The applicant proposes four windows glazed with obscured glass in the north elevation and no windows on the south elevation. There are to be large picture windows on the east and west elevations.

3 BACKGROUND

- 4.1 Planning application 06/00777/FUL, for the erection of a three-storey dwellinghouse was refused in March 2007, due to its size and impact on neighbouring residential properties.
- 4.2 Planning application 07/00476/FUL, for the erection of a two-storey contemporary style dwellinghouse was approved in February 2008.
- 4.3 Work started on the construction of a house on the site in 2011 in advance of securing a building warrant or permission from Scottish Water to build over the sewer. The structure that was being built did not comply with the plans and drawings approved under planning application 07/00476/FUL. The dwellinghouse being constructed was sited in different location and had a different fenestration and roof design. The structure under construction was unauthorised and outwith the scope of permission 07/00476/FUL. Permission 07/00476/FUL lapsed in February 2013.
- 4.4 Planning application 11/00780/DPP, for the erection of a dwellinghouse (amended design and siting to 07/00476/FUL) was submitted in an attempt to regularise the unauthorised situation. The proposal was for the construction of a two-storey building with a hipped pitched roof, with the ridge of the house running perpendicular to the main road. There were other proposed alterations to the scheme, as compared to the previously approved scheme. However the main change was the inclusion of the pitched roof on top of the two-storey building. This application was refused planning permission due to its detrimental impact on the amenity of neighbouring properties. The Planning Authority was also concerned about the design of the proposed house. The applicant requested the decision be reviewed by the Local Review Body. The Local Review Body dismissed the review at its meeting in September 2012.
- 4.5 An Enforcement Notice was issued on 20 December 2012 requiring the unauthorised structure to be demolished and the resulting material removed from the site. The compliance period expired on 16 May 2013. The recipient of the notice did not appeal the notice.

- 4.6 The planning application before the Committee for consideration was submitted on 26 July 2013.
- 4.7 The application was called in to be determined by the Planning Committee by Councillors Lisa Beattie and Peter Boyes, the reason being the number of objections and the potential impact the proposed building has on adjoining properties.

5. CONSULTATIONS

- 5.1 **Scottish Water** was consulted on the planning application, given the presence of a mains sewage pipe which runs through the length of the site. Whilst not objecting to the planning application, Scottish Water has advised that, from their perspective, generally no building would be permitted over the sewer by them. They state “if any building over the sewer was to be agreed by Scottish Water, this would require to comply with Section 21 of the Sewerage (Scotland) Act 1968”.

6 REPRESENTATIONS

- 6.1 There have been objections received from seven different properties in connection with this planning application. Each of the objections come from immediate neighbours of the application site. The objectors are concerned regarding the following issues:
- Loss of privacy;
 - The development will be overbearing;
 - Loss of light in to gardens and dwellings;
 - Impact of artificial light from the completed house on neighbours;
 - The proposal is for an unattractive ‘box’ structure and is out of character with the surrounding area;
 - The proposal would represent an over-development of the area;
 - The developer should not be allowed to build on top of a mains sewage pipe;
 - The development may destabilise a retaining wall;
 - The developer continues to flaunt the rules and legislation;
 - Loss of property value; and
 - There is a specific concern that there may be a cost to the taxpayer if damage is done to the sewage pipe or if maintenance work is required to be carried out at a future date.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013), and the Midlothian Local Plan (MLP), adopted in December 2008. The following policies are relevant to the proposal:

- 7.2 The application site is identified in the adopted Midlothian Local Plan as being located within the built-up area of Eskbank. Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
- 7.3 Policy **DP2: Development Guidelines**, sets out detailed design guidance for new developments.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise. The letters of representation and the consultee response are significant material considerations in the determination of this planning application.
- 8.2 The relevant Midlothian Local Plan policy RP20 seeks to protect the built-up area from inappropriate and incompatible developments. This policy sets out a general presumption against new development within the built-up area where it is likely to detract from the existing character or amenity of the area. The DP2 guidelines within the local plan set out the detailed design requirements for new development.
- 8.3 It is necessary to clarify a point raised by one of the objectors in advance of assessing the planning application. The applicant, on his submitted planning application form, states that the construction work has already commenced on the site and that the development work relates to the house granted planning permission through application 07/00476/FUL. This is not correct. The partially constructed house is unauthorised. It has been constructed in a different position to that previously approved and, as such, has never had planning permission. In addition, planning permission for 07/00476/FUL has now expired as it was not commenced within the statutory time period conditioned on the decision notice. In effect, it is the amended siting of the house that the applicant is applying for. He is seeking to regularise the unauthorised construction of a dwelling on this application site.
- 8.4 The application must be dealt with as a new proposal for a dwellinghouse on the site, and not as a renewal of the previously approved scheme. However, the previous approval should be taken in to account as a material consideration in the determination of the current planning application.
- 8.5 Considerable negotiation took place between the Planning Authority and the applicant at the time of the 2007 planning application, in an attempt to reach an agreement on a development which would have as little adverse impact on neighbours as possible as well as improving the appearance of this unattractive gap site. The scheme that was arrived at, whilst unusual in appearance, would have succeeded in improving the appearance of the area whilst protecting as far as possible the amenity of the neighbouring residents.

It was acknowledged that there would have been some change in the amenity enjoyed by neighbours, but it was considered, by the Planning Authority, that there would not have been a significant adverse impact on the amenity of the neighbours. The Planning Authority was clear in expressing to the applicant that the development was on the margins of acceptability and even conditioned that no extensions could be erected under permitted development rights in order to control potential adverse impact on neighbours.

- 8.6 This revised application now seeks consent for the dwellinghouse in a slightly different position, but with the same design as previously approved. The house, as now applied for and partially constructed, is sited approximately one metre further back into the site than was originally approved in the 2007 application. The difference in the siting of the dwellinghouse appears small, however in a tight and constrained urban layout even small amendments can have significant impacts on amenity and therefore the acceptability of a development. This is particularly the case where the development was already on the margins of acceptability.
- 8.7 The size and orientation of the proposed house are such that it will result in the rear elevations of the neighbouring properties facing on to high walls. However, the proposed building satisfies the minimum gable to rear distance from 4 Westfield Drive, as is required through policy DP2 of the local plan. The daylight and sunlight previously enjoyed by the neighbouring dwellings will not be significantly affected, however there will be a period each day where the gardens of the properties on Westfield Drive may be affected by shadow from the new dwelling. On its own, it is not considered that this would be sufficiently significant to warrant refusal of the planning application.
- 8.8 The new house falls within the 16 metre distance, outlined in policy DP2, from two dwellings on Westfield Bank. In moving the house further back in to the site it now has a significantly detrimental impact on the property at 2 Westfield Bank. The partially constructed house has been sited so that it now extends across almost the entire width of the back garden of 2 Westfield Bank. Covering this amount of the outlook from 2 Westfield Bank, and at the proposed height in such close proximity, will have a significant overbearing impact on this property. The previously approved scheme more evenly distributed the length of the proposed house across the back gardens of 1 and 2 Westfield Bank.
- 8.9 In addition, in moving the dwellinghouse further back into the site it will bring its rear elevation closer to some of the houses on Westfield Drive, potentially having an additional detrimental impact on the privacy of these neighbouring residents. Should permission be granted consideration would need to be given to obscuring the windows on the rear elevation, in order to avoid impacting on the privacy of neighbours. However, this will have an unavoidable adverse impact on the amenity of the future residents of the proposed house as it will result in a living area of that house having no outlook.

- 8.10 The majority of immediate neighbours have objected to the proposed development. The objectors have raised concerns over the detrimental impact the development will have on their amenity. The objectors are concerned regarding the size and height of the dwelling and its resultant impact on their privacy and enjoyment of their properties. These issues are addressed above. There is also some concern regarding the likely impact on the value of their properties, which it must be noted is not a material planning consideration.
- 8.11 The previously approved dwellinghouse was to be a two storey flat roofed building. The house was to be modern in style, and whilst it did not look like buildings in the surrounding area it was judged not to have a significant adverse impact on the character or amenity of the area.
- 8.12 It was also recognised that the dwellinghouse would be a new feature in the area which would result in a change in the amenity enjoyed by residents, however it was judged that this change would not have a significant adverse impact on amenity. The position, height, design and fenestration had been discussed at length with the applicant during the application and, as stated above, it was considered that the proposed development could not be amended any further without potential impact on the neighbours. This currently submitted revised scheme will result in an unacceptable impact on the amenity enjoyed by neighbouring residents, in particular those at 2 Westfield Bank.
- 8.13 While the Planning Authority acknowledge that there is a mains sewage pipe running through the site this is not a material consideration in the assessment of the planning application. This report has not assessed, and has no requirement to assess, the potential for damage to the sewage infrastructure as a result of development on the site. However, comments from Scottish Water, with regards the development, provide a useful background to how the developer has approached developing this site.
- 8.14 Scottish Water have powers to prevent development work from being carried out over mains sewage infrastructure. The latest correspondence that the Planning Authority has received from Scottish Water indicates that they (Scottish Water) are not in a position to allow the applicant to build over the mains sewage pipe. So far they have not been satisfied with the developer's approach to developing this site and have served a stop notice on him.
- 8.15 Midlothian Council, as the Local Planning Authority, and Scottish Water operate under different legislation, therefore it is possible for both bodies to arrive at different outcomes with regards a view on the proposed development. However, the developer must receive consent from both before commencing with development.
- 8.16 In summary, it is clear that there are a number of differences between this proposed development and the 2007 proposal, which was granted planning permission. Subsequent unauthorised development has led to difficulties with Scottish Water not permitting development to date and the Council taking enforcement action against the developer.

- 8.17 There is also a significant level of objection to the development from neighbouring residents. These neighbours have raised numerous relevant concerns regarding the development and the developer's approach to the development and planning process.
- 8.18 Finally, it was acknowledged that the originally approved scheme was on the margins of acceptability. This proposed scheme has resulted in a development which will have a significant adverse impact on the neighbouring residents, and as such should not be supported.

9 ENFORCEMENT OPTIONS

- 9.1 The works required by the enforcement notice referred to in paragraph 4.5 of this report have not been carried out and the owner is now in breach of the notice and is guilty of an offence. Where the steps required by an enforcement notice have not been taken within the compliance period there are a number of options available to the Council. These are as follows:

9.2 Negotiate with the Land Owner

The Council can request that the owner demolish the unauthorised structure within an agreed time frame.

9.3 Execution of Works Required by the Enforcement Notice (Direct Action)

The Council can enter the land, take the steps required by the notice and recover from the owner of the land any expenses reasonably incurred by them in doing so. As the owner of the land did not appeal the notice he is not entitled to dispute the validity of the action taken by the Council in carrying out the steps required by the notice. The estimated cost of removal of the partially built structure is about £19,000. Although legally recoverable there is a risk albeit relatively small that these costs may not be fully recovered.

9.4 Report the Offence to the Procurator Fiscal

The breach of planning control can be reported to the Procurator Fiscal with or without taking any direct action, The Procurator Fiscal can imposed a fine of up to £20,000, although the fine is likely to be significantly less for a first offence. The breach of planning control could be referred back to the Procurator Fiscal if the owner does not take steps to remedy the breach. The scale of fine is likely to increase if repeat prosecutions are pursued. However, after two or three successful prosecutions the Courts are likely to request the Council use its direct action powers to resolve the breach of planning control.

9.5 Serve a Fixed Penalty Notice

The Council can serve a fixed penalty notice, within six months of the breach, effectively discharging any liability to conviction for breaching the notice. The

Fixed penalty charge for a breach of a planning enforcement notice is £2,000. If the penalty is not paid within 30 days the person served with the notice is guilty of an offence. It is not competent to serve more than one fixed penalty notice.

9.6 Compulsory Purchase the Site

The Council could purchase the land from the owner using its compulsory purchase powers. The estimated cost of compulsory purchase is £50,000. The Council will then be responsible for demolishing the unauthorised structure and maintaining the land.

10 RECOMMENDATION

10.1 It is recommended:

- i) that planning permission be refused for the following reason:

The position of the proposed dwellinghouse would have a dominant and detrimental overbearing impact on neighbouring dwellings and therefore does not comply with the terms of policy RP20 of the adopted Midlothian Local Plan.

- ii) the site owner is given 56 days to demolish the unauthorised structure and remove the resulting material from the land;
- iii) if the owner fails to comply with recommendation ii), the Council will issue a fixed penalty notice *and* instigate direct action proceedings to demolish the unauthorised structure and remove the resulting material from the land and recover the costs from the land owner; and
- iv) hold any enforcement action in abeyance as outlined in recommendation iii), if an appeal against the refused planning permission is submitted to the Scottish Ministers.

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Date: 1 October 2013

Application No: 13/00548/DPP (Available online)

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Validation Date: 26 July 2013

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Background Papers: 06/00777/FUL, 07/00476/FUL, 11/00780/DPP