



Appeal Decision Notice

Decision by Elspeth Cook, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2408
- Site address: 72-74 Eyre Place, Broughton, Edinburgh EH3 5EL
- Appeal by CA Eyre Place (Edinburgh) Property against the failure to issue a decision by City of Edinburgh Council
- Application for planning permission 22/03834/FUL dated 28 July 2022 deemed to be refused on 15 February 2023
- The development proposed: Erection of student accommodation with associated amenity space, access, cycle parking and landscaping (142 studio flats) (as amended).
- Date of site visit by Reporter: 25 April 2023

Date of appeal decision: 14 June 2023

Decision

I dismiss the appeal and refuse planning permission.

My decision on the appeal regarding a residential development on land immediately adjacent to this site (PPA-230-2409) is issued separately.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of the National Planning Framework 4 (NPF4) and the Edinburgh Local Development Plan 2016 (ELDP). Scottish Planning Policy 2014 (SPP) and the South East Scotland Strategic Development Plan 2013 (SESplan) were superseded on 13 February 2023.
2. I must also pay special attention to the desirability of preserving or enhancing the character or appearance of the adjoining conservation area, in accordance with s.64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
3. The council has not set out a defence of the deemed refusal of planning permission and its submission relies mainly on a report recommending approval of the development that has not been endorsed by its planning committee. The report does not include an assessment of the proposals against the relevant policies of NPF4 and the council did not provide such an assessment when invited to do so.
4. Having regard to the development plan I consider the main determining issues in this case are:-
 - the principle of student accommodation at this location;
 - the design of the development;
 - residential amenity; and
 - the transport and parking requirements for this type of use.

Background

5. The 0.16 ha appeal site is the northern part of a, now vacant, 0.29 ha, builders merchant's yard lying between Eyre Place, Eyre Place Lane, Rodney Place and a children's play facility (The Yard). The buildings within the yard have been demolished leaving the gable end of a brick building and a stone retaining wall to form the western boundary. The main vehicular access is from Eyre Place with two further access points remaining on Eyre Place Lane. The southern part of the vacant yard is the subject of a separate appeal relating to a proposed residential development (PPA-230-2409).

6. The New Town Conservation Area lies to the west of the appeal site with the boundary of that designation following the west side of Eyre Place Lane. The Garden and Designed Landscape designation covering the New Town Gardens lies to the south and west of the appeal site overlapping the southern part of the vacant yard.

7. The proposed student accommodation would provide 142 studio flats in a single building ranging from three to six storeys in height. It is designed as a car free development without a vehicular access point or off-street parking but improvements are proposed to footways along Eyre Place and Eyre Place Lane including the narrow footpath running between Eyre Place and Rodney Street (not currently within the vacant yard).

Principle of student accommodation

8. As the vacant yard is brownfield land last used, but not protected, as employment land ELDP policy Emp 9, (Employment Sites) and NPF4 Policy 9, (Brownfield, vacant and derelict land and buildings) apply. I find the land has no biodiversity value in its current state, its regeneration is to be encouraged and the student accommodation, although residential in nature, would not inhibit any existing employment uses in the area. As such the principle of developing the employment land would be supported by these policies.

9. I find the development plan is supportive of purpose built student accommodation. NPF4 policy 16 (Quality Homes) part c) offers support in principle for developments providing homes for people undertaking further education and, at page 118, the ELDP recognises that purpose built student accommodation makes a positive contribution in terms of protecting the mainstream housing stock and assisting the growth and attractiveness of higher education within the city. The ELDP sets two locational requirements for student accommodation in policy Hou 8 (Student Accommodation) and the non-statutory Student Housing Guidance offers further detail on interpreting this policy.

10. The first requirement of Hou 8 expects the location to be "appropriate in terms of access to university and college facilities by walking, cycling or public transport" and the supporting text describes this preferred relationship as "close". Despite the use of the word "close" I do not find this policy expects all student accommodation to be located immediately adjacent to a campus. Firstly, the policy refers to accessibility by cycling and public transport and, secondly, student accommodation is usually available to students attending any higher education facilities spread across the city.

11. I consider it is the accessibility rather than proximity to education facilities that is key. As is evident from the appellant's Transport Assessment this site offers good walking, cycling and public transport links across the city. While some journeys are longer than 20 minutes the site would otherwise achieve the connectivity expected of NPF4 policy 15

(Local living and 20 minute neighbourhoods) due to its proximity to public transport routes and the commercial and community facilities in the Canonmills area.

12. The Student Housing Guidance also considers the issue of proximity. Criterion a) is supportive of student accommodation proposals located within, or sharing a boundary with the campus locations set out in the guidance. Those sites located further away, such as the appeal site, should be limited in size (less than 0.25 ha). The appeal site is under this threshold and thus meets this expectation.

13. The second locational requirement of Hou 8 seeks to prevent a concentration of students that “would be detrimental to the maintenance of balanced communities or to the established character and residential amenity of the locality”. No maximum thresholds or the extent of a “locality” are prescribed. However the Student Housing Guidance suggests there is a greater likelihood of imbalance within a community if the student population exceeds 50% of the population within that community. In the absence of any other guidance on thresholds and bearing in mind this approach has been applied in a number of other cases (such as appeal decision PPA-230-2323) I consider the 50% threshold to be a suitable measurement.

14. From my reading of the appellant’s case and the council’s report there are a number of different ways of assessing the extent of a “locality” or “community”. But in each case the data zones from the census are used and the baseline student population is derived from the 2011 census data. In each scenario (with known student and housing developments taken into account) both the appellant and the council predict that the student population (including the appeal development) would increase but still be less than the 50% maximum. The various permutations are summarised as follows:-

- within six data zones encircling the site student numbers rise from 10% to 12 %;
- within a ten minute walking distance student numbers rise from 14% to 16%; and
- within one data zone at the site student numbers would rise from 11% to 20%.

15. The site is located between established residential buildings but the wider area contains a mix of commercial and community facilities and in such a location I would not expect the predicted percentage rise in student numbers to cause a significant imbalance within that community or to significantly impact on the existing levels of residential amenity enjoyed by the community as a whole. As a consequence I find the location of the student accommodation would meet the expectations of policy Hou 8. I return to the direct impacts on amenity arising from the design of the development in more detail below.

16. The Student Housing Guidance also requires a proportion of mainstream housing to be provided as part of a student accommodation development. Although not replicated in development plan policy I have considered whether this requirement would impact on the principle of developing at this particular site.

17. The guidance requires me to establish two things. Firstly, whether the development site forms part of a single site that existed prior to 2016. Secondly, whether the ‘developable area’ within that single site exceeds 0.25 ha. The developable area is defined in the guidance as the application site area minus any part of the site remaining within the highway. If the ‘developable area’ exceeds 0.25 ha then mainstream housing should form part of the development of the single site and the gross floor space of such housing should be no less than 50% of the gross floor space of the student accommodation element.

18. It is evident that the appeal site currently forms part of a single site: the builders merchant’s yard. The council indicates the developable area within the whole yard is 0.29

ha. This reflects the site area figures set out in the respective application forms which together amount to 0.2963 ha. The appellant maintains in the further submissions that the combined site area is 0.27 ha and when the 0.0358 ha of land required to protect the sewer line is factored in, the developable area drops to below 0.25 ha. While I am unable to reconcile these various figures it is clear that neither the council nor appellant has presented the calculation of 'developable area' as the site area minus the parts remaining within the highway as required by the guidance.

19. Despite these uncertainties I can see from the layout plans that elements of the adjacent public highway are included in both sites. It seems likely that the 'developable area' would be less than 0.2963 ha but may still exceed 0.25 ha. The guidance therefore expects an element of mainstream housing and the development of the land to the south was intended to address this. Albeit the appellant accepts those separate proposals would not meet the floorspace requirement.

20. In this respect I am referred to three appeal decisions. In PPA-230-2208 (Dundee Street) the reporter did not apply this element of the guidance because the developable area exceeded the 0.25 ha by a small margin; in PPA-230-2336 (Lasswade Road) the reporter accepted that the 'developable area' can take into account a protected tree; and in PPA-230-2298 (Gorgie Road) the reporter did not apply the guidance because the characteristics of the location rendered the site unsuitable for mainstream housing. The council's report also uses a different calculation (site area rather than gross floor space).

21. This indicates to me that the characteristics of the site can dictate when it may not be appropriate to rigidly apply this element of the guidance. In these circumstances and taking into account the sewer restriction, the character of the lane and the other uncertainties regarding the size of the 'developable area' I do not consider the failure to meet the measured standard for residential development to impact on the principle of developing the vacant yard for this amount of student accommodation.

22. ELDP policy Des 2 (Co-ordinated Development) requires the design of a development to consider the effects on the development of adjacent land. Although I have some concerns regarding the design of the development I do not find the proposed layout, where development is primarily aligned parallel to the site boundaries, presents any significant obstacles to future development of land immediately to the south or east (which I am advised is part a potential housing site within the Proposed City Plan).

23. Drawing all these factors together, I find that the proposed development meets the locational requirements of ELDP policy Hou 8 and that the student accommodation at this site would, in principle, comply with the development plan. Taking into account the above appeal decisions, there is nothing in the locational requirements of the guidance that would justify setting aside the provisions of the development plan in this respect.

Design of the development

24. Four storey residential tenements currently align the curving street from Eyre Place into Logan Street with a five and then six storey block returning back onto the higher ground at Rodney Street. Two contemporary five storey blocks lie to the east at Rodney Place. The historical maps included within the archaeological desk study show that the appeal site was originally developed as railway or industrial land and the sloping, cobbled surface of Eyre Place Lane appears to be a remnant of an access route into this land. So while tall tenemental buildings are common here there is no evidence that the yard contained any buildings of a scale or form similar to those tenements.

25. The development design as explained through the appellant's Design Statement achieves many of the goals within the six qualities of a successful place as set out in both NPF4 Appendix D and the non-statutory Edinburgh Design Guidance. From my reading of the visualisations within the Design Statement the proposals would be unlikely to impact adversely on the historic city skyline as viewed from the more distant viewpoints. I also find the architectural style, the unusual roof profile and the proposed materials are all sympathetic or complementary to the surrounding buildings.

26. The proposed building (where it faces Eyre Place) contains six floors and the wall head of the five storey masonry element sits level with the ridge line of the four storey tenement to the east. The visualisations show that this part of the development, even though the floor levels do not align with those immediately to the east, (and it is clearly higher than the adjacent buildings) would sit comfortably alongside those buildings. I find it would offer a positive addition to the streetscene between these taller buildings.

27. Yet it was apparent at my site visit that the character, or sense of place, experienced as you travel along the busy thoroughfare of Eyre Place is distinctly different from that found within Eyre Place Lane and it is here where I find the development would not fully address the fourth quality of a successful place 'distinctive' (as described in Appendix D of NPF4).

28. Even with the remnants of the builders merchant's yard still in place, the industrial character of the lane is diminished and is more strongly influenced by the rear gardens of the tenements, the sense of enclosure provided by the boundary fences, the development of terraced (mews style) houses on its western side and the backdrop of mature parkland trees at its southern end. This mews character intensifies as you travel along the lane. Indeed the Edinburgh Design Guide (page 55) includes a photograph of the terrace as evidence of a successful mews development.

29. The six storey element of the building continues back along the lane for around 25 metres and then lowers to a five storey building, with the fifth storey contained within the roof structure and set back from the wall head. It is the scale, height and massing of this part of the building, especially as it is immediately adjacent to the footway, that I consider would have a dominant presence in the lane. It does not, in my opinion, respond adequately to the changing character and the increasing sense of intimacy that develops along the lane. I do not therefore find the development would be 'distinctive' in the context set out in Appendix D of NPF4 as this part of it fails to respond sympathetically to the sense of place.

30. For the above reasons I find the development would not comply with ELDP policies Des 1 (Design Quality and Context) or Des 4 (Development design -Impact on setting). There is also tension with ELDP policy Des 11 (Tall Buildings – skyline and views) as the building is not designed as a landmark building yet it would be higher than the adjacent tenements and I find its scale is not appropriate in the context of Eyre Place Lane. This all leads to conflict with parts b) and c) of NPF4 policy 14 (Liveable places).

31. The New Town Conservation Area focusses on the planned Georgian townscape to the south but extends to the rear of Logan Street and Eyre Place excluding Eyre Place Lane. This indicates to me that the lane is much less important to the character of the area than the Logan Street or Eyre Place frontages. Although I consider the development would be unsympathetic to the architectural character of the lane I find the proposals overall, while not enhancing, would preserve the character and appearance of the adjacent conservation area and would therefore comply with ELDP policy Env 6 (Conservation Areas-Development) and part d) of NPF4 policy 7 (Historic assets and places).

Residential Amenity

32. From the various technical reports provided by the appellant it is evident that the student accommodation would be able to achieve satisfactory daylighting standards (as set out in the Edinburgh Design Guide) for the majority of the studios. Only one north facing corner studio on the first floor (3F_725) would achieve less than the required Average Daylight Factor (ADF): 1.27% rather than 1.5%. The external open space (in the rear courtyard garden and in roof top spaces) would meet the standards expected by ELDP policy Hou 3 (Private Green Space in Housing Development). The issue in this case is therefore the extent of any adverse effects on the amenity (including daylight, sunlight and privacy) currently enjoyed by the adjacent residential properties.

33. The appellant provides diagrams that show the daylight to windows of ground floor properties would be impacted by the development when a vertical sky component test is applied – i.e. the building would project above a 25 degree angle extended from a point set at 1.8 metres above the floor level of the room containing a window. If this occurs the Design Guide recommends applying the ADF calculation. According to the table of figures provided in the Revised VSC Results, the daylight enjoyed by the windows of the buildings lying to the north east and north west would meet the ADF standards set out in the Design Guide for each type of room. Only one property, a ground floor flat at 64 Eyre Place, has a kitchen window with an ADF of 1.9% rather than the 2% required by the guidance. On that basis I find the development overall has managed to secure a reasonable level of daylight to the windows of the surrounding properties.

34. Sunlight to the gardens is addressed within the Supplementary Daylight and Sunlight Analysis. The required number of sunlight hours, set out in the Design Guide, can be achieved except at the communal garden of 76-78 Eyre Place and 1-23 Rodney Street. The appellant confirms that this garden already fails to achieve the minimum sunlight hours for over 50% of the garden (as at March each year) due to the overshadowing of adjacent buildings and 'landscaping'. The landscaping is mostly garden plants and one evergreen and two deciduous trees near the boundary with the pedestrian footpath.

35. It is significant, in my opinion, that between 1 – 4 pm (the times when around 50% of this garden can currently achieve something close to the required level of sunlight) the amount of garden receiving sunlight would reduce to between 0% and 19% with the proposed development in place. I am not convinced that the current lower levels of sunlight available here, even though they increase during the summer months, is sufficient justification to allow a reduction to the extent predicted.

36. In terms of the existing levels of privacy the height of the existing boundary walls or the transparency of metal railings means the rear communal gardens currently have little privacy from the surrounding public spaces or the existing windows that look into the gardens. The additional windows that would look towards these areas would add to this but not to such a degree that I find a significant adverse effect on the existing privacy levels.

37. However the rear windows of the tenements on Eyre Place have been accustomed to an open outlook without windows of residential properties looking directly into the rear facing rooms. The Design Guide recognises that protecting the privacy of rear windows can be more important than the street facing windows and I find this approach would be relevant in this case. No minimum separation distance between windows is recommended in the guidance but it is suggested that separation distances should reflect the pattern of development and whether the proposed windows are set at an angle to one another.

38. I find the angles of the buildings and separation distances at Eyre Place Lane would maintain a reasonable level of privacy and there would be no significant effect on the Rodney Place properties. However the separation distance between 76-78 Eyre Place and the first and second floor windows of the proposed eastern wing ranges from just 9 to 13 metres and even though the buildings would be set at an angle I find there is potential for a loss of privacy to the existing rear facing windows. I have not identified any rear window to window relationships of this nature within the immediate area.

39. The appellant's Noise Impact Assessment confirms that the studios can be protected from the noise arising from the communal rooms. On that basis it seems unlikely that an adverse noise impact would be experienced by the surrounding residential properties. It does not however address the noise arising from the use of the outdoor communal spaces (only the air source heat pumps). It is therefore possible that unregulated use of these spaces in the late evening would have the potential to disturb existing residents.

40. Part c) of NPF4 policy 14 (Liveable Places) would not support development proposals that are "detrimental to the amenity of the surrounding area". Part a) of ELDP policy Des 5 (Development Design – Amenity) supports developments where "the amenity of neighbouring developments is not adversely affected" and where "future occupiers have acceptable levels of amenity". For the above reasons I find the proposals would conflict with these policies in terms of sunlight, privacy and noise (but only in so far as there is uncertainty regarding the noise arising from the use of the external communal spaces).

Transport matters including parking provision

41. This site is well served by public transport and cycle or pedestrian routes and I find it offers a suitable location for a car free development in accordance with ELDP policies Tra 2 (Private Car Parking), Tra 3 (Private Cycle Parking) and NPF4 policy 13 (Sustainable transport) part e). Especially as the site is within a controlled parking zone where students would not be eligible for a resident's permit, adequate provision is made for cycle parking on site and improvements are to be made to the width and construction of the public footways on Eyre Place and Eyre Place Lane.

42. However support for no, or low, parking provision under NPF4 policy 13 is conditional on there being no barriers to access by disabled people. Eight of the studios are designed to be accessible for disabled persons and I asked the appellant and the council to consider this element of NPF4. The appellant and council highlight that any disabled resident (that is dependent on a private car and eligible for a Blue Badge) could park in 'pay and display' on-street spaces or on yellow lines where loading is possible.

43. However the appellant has demonstrated that there is space to accommodate one accessible off-street parking space to the rear of the proposed building (taking access from the adjacent residential development) and suggests a condition could be applied requiring this to be provided. I find one accessible space would fit within the council's parking standards as the pro-rata provision when no car parking spaces are provided need not be zero accessible spaces. I would therefore be inclined to apply a condition as suggested even though this would reduce the amount of communal open space.

44. The Transport Assessment predicts a low vehicle trip generation for this development, primarily due to the lack of off-street parking provision. Any vehicular trips would be linked primarily to drop-off and/or the servicing of the building and this is expected to be a net reduction in vehicle trips compared to the previous use. This part of Eyre Place

is part of a one way street for vehicles (but not cycles) and vehicles can only approach the site frontage from the east. In these circumstances I would not anticipate the type and number of trips to give rise to any conflict with the existing flow of traffic on this route.

45. Although I have some reservations regarding the lack of a dedicated servicing point for delivery vehicles I accept that parts of Eyre Place near the site, while not suitable for parking, are available for loading. As it is the appellant's intention to operate a time slot system at busy times (e.g. start of term) I find the lack of a servicing point would not impact significantly on the limited on-street parking available to surrounding residents.

Other development plan matters

46. Having considered the various consultation replies and the terms of the council's committee report, including the application of the proposed conditions, I am satisfied that the proposals would be able to comply with the relevant ELDP and NPF4 policies that address surface water management, flood risk, air quality impacts, contaminated land, archaeological investigations, improvements to biodiversity, and the energy efficiency or sustainability of the developments. Although many representations predict adverse impacts on availability of healthcare facilities the council's report advises that the site is not within a Healthcare Contribution Zone. I therefore find the proposals would comply with ELDP policy Del 1 (Developer Contributions and Infrastructure Delivery) (part 2) and the requirements of NPF4 policy 18 (Infrastructure First) would not be relevant at this time.

Conclusions on the development plan

47. The proposals are supported by the policies of the development plan and in many areas its design and attributes would be able to meet the relevant policy requirements. However in this case I find the conflicts with policies that set out the design expectations for new development and which seek to protect residential amenity are such that the development would not comply with the development plan overall.

Other matters

48. The Proposed City Plan 2030 is currently the subject of examination and I can give little importance to its provisions at this time including the proposed housing allocation for this site and also the evolving position regarding the impacts on health care infrastructure. I do not identify any elements of the draft policies that deal with the key determining issues (design and residential amenity) that would lead me to alter my findings on these matters.

49. The Student Housing Guidance expresses a preference for cluster flats. A limit on the number of studios is also found in draft policy Hou 6 (Student Accommodation) within the City Plan. As the reason for limiting studio apartments is linked to the negative effects of living in isolation and this proposal provides a range of communal spaces I find, in this case, that the number of studio apartments is not a determining factor.

50. There are a large number of objections (over 400), a petition containing 399 signatures and around 25 letters of support. The key matters raised in the objections are addressed by my findings above. I had an opportunity to visit King George V park at my site visit and although the development would result in additional residents there is nothing to indicate this would lead to damage to this urban green space or the play facilities.

51. Concerns are expressed regarding the potential impacts on users of The Yard, a specialist play facility located at the end of the lane. Whilst some disturbance during the

construction period is inevitable I would not envisage the normal activity around the student accommodation building to impact directly on the users of The Yard. There is no footpath connection through The Yard to the public park, there is an intervening residential development proposed and it is the car park for the play facility that is closest.

52. Any particular concerns regarding the detailed specifications within the building (around accessibility) would be matters for the separate consenting process under the Building Regulations. I have considered the council's Integrated Impact Analysis under the Equalities Act 2010 and the areas where mitigation may be required. In this case the matter of accessible parking is addressed in my findings above.

53. Concerns are raised regarding the impacts of a hotel use during the summer months. However this does not form part of the proposals before me I do not consider these concerns to be a material consideration at this time. Construction impacts, such as noise and traffic, are an inevitable part of developing in a urban location and would not justify, alone, the refusal of a development at this location. Maintaining vehicular access to the existing houses and the play facility is primarily a matter for the day to day construction site management. The appellant's conduct when developing student accommodation elsewhere is not a relevant planning matter.

54. The appellant maintains that the redevelopment of the builders merchant's yard offers the chance to remove a 'bad neighbour' development from this location. The list of 'bad neighbours' is found within Schedule 3 of the Development Management Regulations¹ but there is no specific mention of a builders merchant and I do not consider this use to be a 'bad neighbour'. Especially as it appears this use has been able to co-exist without adversely impacting on the amenity of the neighbouring properties.

Overall Conclusion

55. I am not convinced that the redevelopment of the builders merchant's yard, offers sufficient justification for setting aside my concerns regarding design and amenity. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Elsbeth Cook
Reporter

¹ Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013