

Certificate of Lawfulness

at

16 Cramond Gardens

Edinburgh

EH4 6PU

Development Quality Sub-Committee of the Planning Committee

2 June 2004

Proposal: Laying of timber decking, erection of wooden balustrade and installation of iron spiral staircase to form rear garden terrace

Applicant: Mrs Liston

Reference No: 04/01433/CLU

1 Purpose of report

To recommend that the application be **GRANTED**.

2 Main report

Site description

The application site is on the north side of Cramond Gardens. The site is occupied by a detached bungalow with a large flat roofed extension to the rear. The area is quiet and residential in character.

Site history

An application was approved in 1993 for an extension to the dwelling.

In 2002 an enforcement enquiry was received with regard to the development which is the subject of this application. This enquiry generated a retrospective application for planning permission for the erection of a balcony on the roof of an existing flat roofed extension. This application was subsequently refused by the Development Control Sub-Committee. The Committee also instructed that enforcement action be

initiated. The refusal was appealed and the appeal dismissed. Subsequently the applicant has applied for the current application for a Certificate of Lawfulness on the grounds the development has been in being for a period in excess of four years.

There is a current planning application for the development which includes an increase in the height of the screening to the sides of the balcony.

Development

The application is for a Certificate of Lawfulness for the erection of a balcony /decking to the roof of the single storey rear extension of the property. The balcony is formed with a 1 metre high balustrade. The decking and balustrade are formed in wood. The decking covers an area of approximately 4.5 metres by 13.5 metres.

Consultations

No consultations undertaken.

Representations

One letter has been received from a neighbouring objector.

The letter does not contradict anything submitted in the current application.

Policy

North West Edinburgh Local Plan

The application site is within an area allocated as housing and compatible uses, where the existing residential character and amenity will be safeguarded.

The Draft West Edinburgh Local Plan is a material consideration in the determination of this application. The following draft policies apply:

D.Q. 6 Design of new development
H 12 Residential amenity

3 Conclusions and Recommendations

DETERMINING ISSUES

The determining issue is whether the evidence is satisfactory and confirms that the development has been substantially completed for a period of four years or more?

ASSESSMENT

In order to address these determining issues, the Committee must consider whether:

- a) the information submitted by the applicant proves beyond all reasonable doubt that the structure has been erected for a period in excess of four years. The Council would therefore be time barred from taking any further action in respect of this development.
- b) there is any other evidence, which would support or overturn the evidence submitted.

This application has been submitted following a lengthy planning process. The applicant states that advice was originally sought from the Duty Planning Officer in August 1998 who stated that planning permission would not be required for the proposed development. The structure which is the subject of this application was then erected. At this time both neighbours agreed in with that they had no objections to the structure. A subsequent complaint to Planning Enforcement in July 2002 resulted in an investigation which found that the structure required the benefit of planning permission. An application was then submitted in March 2003. This application was subsequently refused and a resolution made for the structure to be removed. An appeal was then made against the refusal of planning permission. The service of the Enforcement notice was put on hold pending the outcome of the appeal as it was not known at that time that the complaint was made two years after the work was carried out. Subsequent to the determination of the appeal the applicant has now submitted the current application for a Certificate of Lawfulness.

- a) The applicant has stated that the development was commenced in March 2000 and was completed on 27 March 2000. This is supported by an affidavit from Mr Cairns (Building Contractor). A further affidavit has been submitted from Mrs Daynes at Number 18 Cramond Gardens, stating that she saw the construction of the Terrace and that it was in use by the end of March 2000. A further statement was also received from Mr Sandison, the proprietor of Stewart Sandison Window Cleaning Services which states that the development had been completed in March 2000.

The applicant has submitted sufficient evidence to demonstrate that the works had been completed in March 2000.

- b) The applicant makes reference to a conversation with a Duty Planning Officer who has subsequently left the Council. No written evidence is available in this respect. Building Control records do not demonstrate whether or not the structure was in existence at the time the Building Warrant was made. There is no other documentary evidence on file with regard to the date of the completion of this development.

Advice has been sought from Legal Services who confirm that the information submitted demonstrates sufficiently that the development had been substantially completed for a period of four years at the end of March 2004.

Further Assessment

On 02 June 2004 the Development Quality Sub-Committee continued the application for a detailed chronology of events to be submitted and for advice from the Head of Planning & Strategy and the Council Solicitor as to what went wrong, how to avoid the same problem in the future and whether there is a need to tighten up procedures. Advice was also sought on the possible options for, and consequences of, determining this application and the subsequent rights of appeal.

Chronology

July 1998: Elevational sketches drawn up.

August 1998: Drawings shown to neighbours.

03 August 1998: Letters submitted to applicant from neighbours stating that they had no objections to the proposal.

03 August 1998: Applicant states that duty planner advised verbally that planning consent was not required in this case.

10 February 2000: Materials paid for.

27 March 2000: Mr Cairns (builder) completes development.

28 December 2000: Application for Building Warrant applied for.

04 December 2001: Building Warrant approved.

05 August 2002: Enforcement Enquiry opened following receipt of complaint.

11 March 2003: Retrospective application for planning permission received.

07 May 2003: Alterations to the scheme were suggested to the applicant to reduce the impact of the development.

06 June 2003: Revisions to scheme submitted.

16 September 2003: Completion Certificate applied for.

23 September 2003: Completion Certificate released.

29 September 2003: Further supporting letter received from applicant.

23 October 2003: Further supporting statement received from applicant's agent.

11 November 2003: Application determined at Committee for refusal and enforcement action to be taken.

14 November 2003: Memo submitted to Legal Services requesting Enforcement Action be taken.

19 November 2003: Memo from Legal Services requesting detailed instructions for service of notice.

06 December 2003: Appeal against refusal of planning permission submitted.

Service of notice was put on hold awaiting outcome of appeal.

25 March 2004: Appeal dismissed.

26 April 2004: Application for Certificate of Lawfulness lodged.

From details of the date of the Building Warrant and Completion Certificate the Council's Planning Enforcement Team thought that the development had not been completed at the time the Building Warrant application was made and as such were still in time to take enforcement action against the development. This was not the case. Having become aware of this potential problem, additional checking in future should prevent re-occurrence.

Determining the application

Should the Committee be minded to refuse the application the applicant may appeal the decision through the Scottish Executive Enquiry Reporters Unit.

In the case of a Certificate of Lawfulness the legislation specifies that the certificate must be granted if the evidence shows that the balance of probability is that the development has been completed for a period of four years, the applicant does not have to demonstrate this beyond all reasonable doubt. As a safeguard, if further evidence is forthcoming to the contrary, the certificate could be rescinded. In this case the balance of probability is with the applicant and as such the certificate must be issued.

In conclusion, the applicant has demonstrated that the development was completed by the end of March 2000. There is no other evidence to the contrary. As such the development has been in existence for a period in excess of 4 years. The Council is therefore time barred from taking any action with respect to the development covered by this application.

It is recommended that the Committee approves the Certificate of Lawfulness for this development.


PP **Alan Henderson**
Head of Planning and Strategy

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Ward affected 05 -Cramond

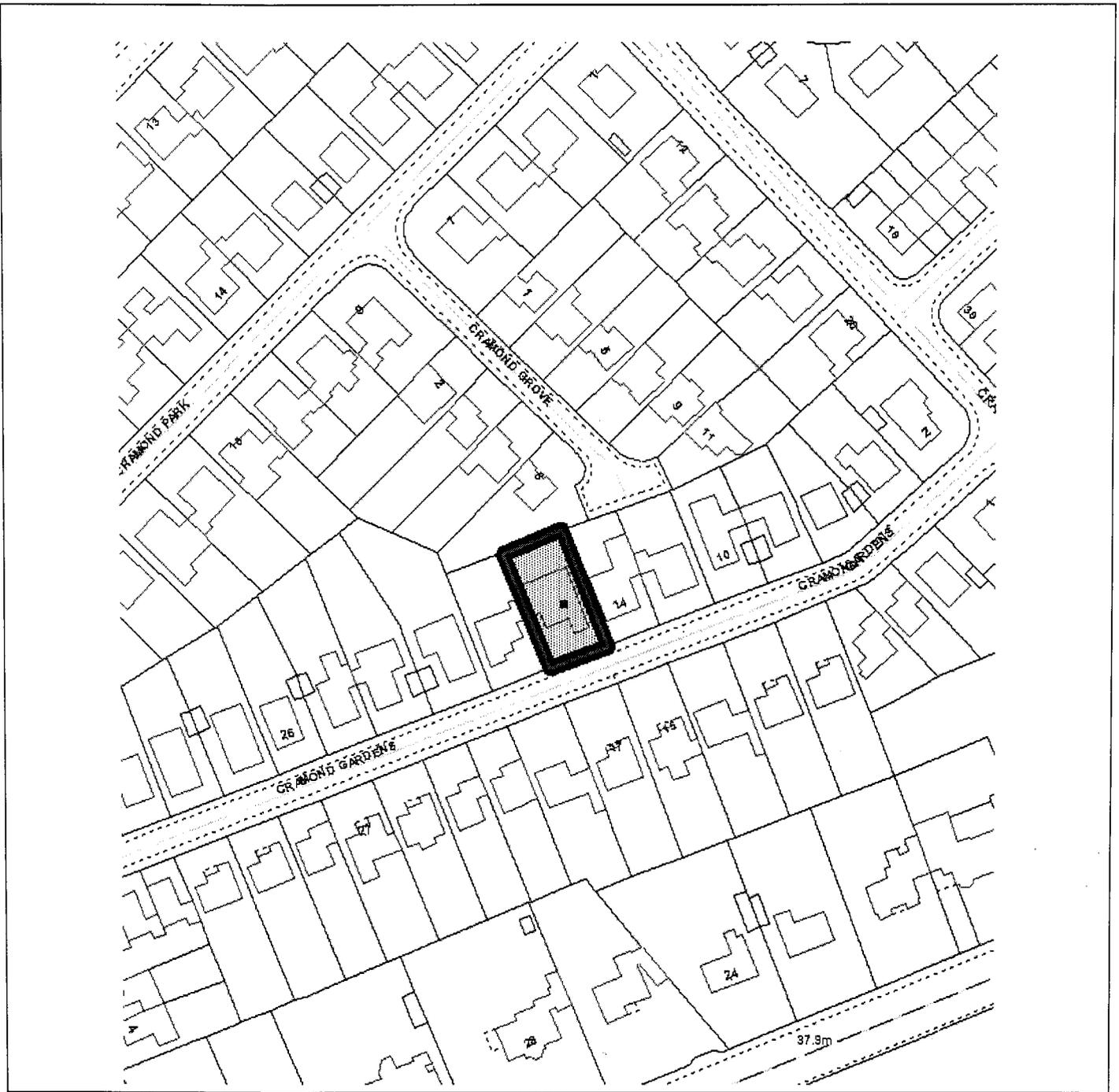
Local Plan North West Edinburgh

**Statutory Development
Plan Provision** Mainly Residential

File

Date registered 26 April 2004

**Drawing numbers/
Scheme**



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PLANNING APPLICATION

Address	16 Cramond Gardens, Edinburgh, EH4 6PU		
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Application number:	04/01433/CLU	WARD	05- Cramond
THE CITY OF EDINBURGH COUNCIL			
THE CITY DEVELOPMENT DEPARTMENT- PLANNING & STRATEGY			