

**Full Planning Application  
at  
16 Ashley Gardens  
Edinburgh  
EH11 1RW**

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**Development Quality Sub-Committee  
of the Planning Committee**

5 February 2003

**Proposal:** Single storey extension to rear  
**Applicant:** Mr S McDougall.  
**Reference No:** 02/03691/FUL

**1 Purpose of report**

To recommend that the application be **GRANTED** subject to;

**Conditions**

1. The development hereby permitted shall be commenced no later than five years from the date of this consent.

**Reasons**

1. In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.

## **2 Main report**

### **Site description**

The property is a two-storey dwellinghouse within a terrace of similar properties with front and rear garden space. The area is predominantly residential in character. There is a 2000mm-boundary fence and hedge surrounding the property, and the rear garden is 15 metres in length.

The property is neither listed nor within a conservation area.

### **Site history**

There is no relevant planning history for this site.

### **Development**

#### Scheme 1

The proposal is for a single storey extension to the rear of the property to form a new dining kitchen and deck area.

The extension is 3750mm in depth from the back wall of the existing dwelling and 5400mm in width, which is almost the full width of the dwelling. The extension provides, in total, an extra 20.25 sq.metres of floorspace.

The extension is built on a slope with a pitched roof sloping from the existing roof and is 3000mm in height at the highest point and 2000mm at the lowest. The side elevations are 600mm from the north east boundary and 600mm from the southwest boundary, with no windows on the side elevations.

The proposed walls are rendered and the roof slated to match the existing. There will be a double glazed upvc three panelled patio door and one tilt and turn window on the rear elevation and three velux windows set into the new roof.

#### Scheme 2

The proposal has now been placed hard up against the northeast boundary and decreased in length by 150mm to 3600mm. On the southwest boundary there is a gutter pipe hard up against the boundary on the back wall, and the wall is 600mm from the boundary to accommodate this. The total floorspace is now 19.4 sq. metres.

### **Consultations**

No consultations undertaken.

## **Representations**

Two letters of objection were received from the two properties adjacent on either side. The reasons for objection are summarised as follows:

1. loss of daylight/sunlight;
2. overdevelopment;
3. the wall is neither on the boundary nor 1 metre from therefore contrary to council guidance.

Other comments were not considered material to this application.

## **Policy**

The site is identified in the **Central Edinburgh Local Plan** as within an area allocated for Housing and Compatible Uses.

### Relevant Policies:

Policy CD10 (NEW DEVELOPMENT - OBJECTIVE) encourages new development of the highest possible architectural and urban quality.

Policy CD17 (MATERIALS) sets out requirements for materials in new developments and seeks a greater use of stone, roofing slate and other traditional materials in appropriate cases.

Policy CD19 (BUILDING ALTERATIONS) sets out requirements for the design, form, materials and positioning of alterations and extensions.

Policy H11 (HOUSING AMENITY) establishes a presumption against new development and changes of use likely to introduce increased levels of traffic or activity to the detriment of residential amenity or to the reasonable prospects of further residential development where this is an objective of the Local Plan.

Non-statutory guidelines on 'HOUSE EXTENSIONS' set out the design principles against which proposals will be assessed.

Non-statutory guidelines 'DAYLIGHTING, PRIVACY AND SUNLIGHT' set criteria for assessing proposals in relation to these issues.

## **3 Conclusions and Recommendations**

### DETERMINING ISSUES

The determining issues are:

- Do the proposals comply with the development plan?
- If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

- If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

## ASSESSMENT

To address these determining issues, the Committee needs to consider whether a) the proposal is in keeping with the building and the area and b) there is a detrimental impact on residential.

a) The proposed extension is single storey, providing an extra 19.4 sq.metres of floorspace to the rear of the property, and does not extend more than one third into the rear garden. The pitched roof runs from the existing roof and will continue the existing roof slope.

The extension has been proposed in materials similar to the existing building and it is considered that the proposal complies with Policy CD10 and the Council's Non Statutory Guidance on House Extensions.

b) With regard to neighbouring properties, the extension extends by 3600mm along both of the boundaries, but is only one storey high with no windows on the side elevations. The slope of the garden combined with the pitch of the roof, will lessen the impact. The extension will be above 11m from the rear boundary.

On the western boundary, there already exists a neighbouring conservatory extension, which is set back 1 metre from the boundary. There is an existing 2-metre boundary fence and hedge between the properties. The extension complies with guidance in relation to overshadowing, and, with the slope of the ground and the roof, it is considered that the proposal will not have a detrimental impact on neighbours.

In conclusion, it is considered that the proposal is in keeping with the building and the area with no detrimental impact on residential amenity.

It is recommended that the Committee approves this application.

## FURTHER ASSESSMENT (1)

This application was reported to the Development Quality Sub Committee on 4 December 2002 and approved.

It was reported to the Committee that the proposal was to be pulled 600mm from the west boundary and abut the east boundary, having been amended from being 150mm from each boundary. This was incorrect. There are no plans or written confirmation from the agent or applicant that this is the case and appears to have been a misunderstanding on the part of the case officer. The amendment only proposed that the east boundary was abutted, but that the extension was 150mm from the west boundary to avoid a down pipe. The depth of the extension was also reduced by 150mm.

Further, the amended plans were not issued as the approved plans. The originally submitted plans were sent stamped approved. Thus the applicant has stamped approved plans for an extension which is 150mm from east and west boundaries and 4m deep (when measured externally).

The neighbour to the west, Mr Smith, drew this to the Department's attention. This neighbour is aggrieved at the misrepresentation to Committee and the fact that what is being built is in breach of guidelines in respect of House Extensions. An apology has been sent to Mr Smith; however, his request to serve a Stop Notice has been duly considered but ultimately decided against.

The extension is a single storey structure less than 4 metres deep, and is, therefore, in accordance with guidelines. The extension is only 150mm from the boundaries, whereas the House Extensions Guidelines indicate that new development should be 1 metre from the boundary or hard up to it. In this case, the fact that the extension is 150mm from the boundary is not considered sufficient grounds for refusal or enforcement action. The extension is 20 square metres in floor area when measured externally, only 4 square metres greater than the applicant could build under permitted development rights. It is not considered that this is a significant departure from guidelines. There is no breach in Local Plan Policy.

The neighbouring property to the west has an approximately 1.7m from the mutual boundary. The 150mm gap that is left as a result of the current proposal is, therefore, only of disbenefit to the applicant. Were the extension to abut the boundary, as the guidelines suggest, this would marginally greater on the neighbours.

Legal Services has confirmed that the Council has no power to "correct" errors in terms of issuing the incorrect drawings. The only route open to the Council is to use powers under the act to modify the permission, which would be likely to involve compensation. In deciding whether to make such an order, regard must be had to the development plan and other material considerations. It would be necessary to show that there is a planning reason why the planning permission should be revoked or modified. As stated above, it is not considered that the proposals represent a significant departure from guidelines and there is no conflict with Local Plan Policy.

#### FURTHER ASSESSMENT (2)

This matter was considered at the Development Quality Sub Committee on 5 February 2003. The Committee continued the item to obtain a report from legal services regarding options available and the implications of these.

The report confirms that it is the notification in writing to the applicant, which constitutes the planning permission. However, it does outline options open to the Council, but recommends that in the circumstances, including the planning assessment of the "approved" development, no further action is taken. The report is attached.

Legal Services have also confirmed that, in the event of any claim made against the Council in respect of any decision, dependent on the nature of the claim, any award of compensation would either be met by the department against which the claim was made, or referred to the Council's Insurers. Awards for compensation would not be met by individual offices or members.

The extension has been completed and a completion certificate issued from Building Control Services in Property Management.

Further correspondence has also been received from and on behalf of the neighbours at 18 Ashley Gardens. They employed their own firm of architects to assess the proposals. Their conclusion is that the proposals do not comply with the guidelines in respect of overshadowing and distance from the boundary. As stated previously, as the extension is less than 4 metres deep and is single storey, it does comply with the guidelines in respect of overshadowing. It has been acknowledged that the distance from the boundary is at odds with the guidelines, however, this is a minor departure which is only of disbenefit to the applicants and is not sufficient reason in itself to recommend refusal or enforcement action.

It is recommended that no further action be taken in respect of this matter.

Alan Henderson

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**Alan Henderson**  
Head of Planning and Strategy

**Contact/tel** Gayle Adams on 0131 529 3464 (FAX 529 3717)

**Ward affected** 29 -Shandon

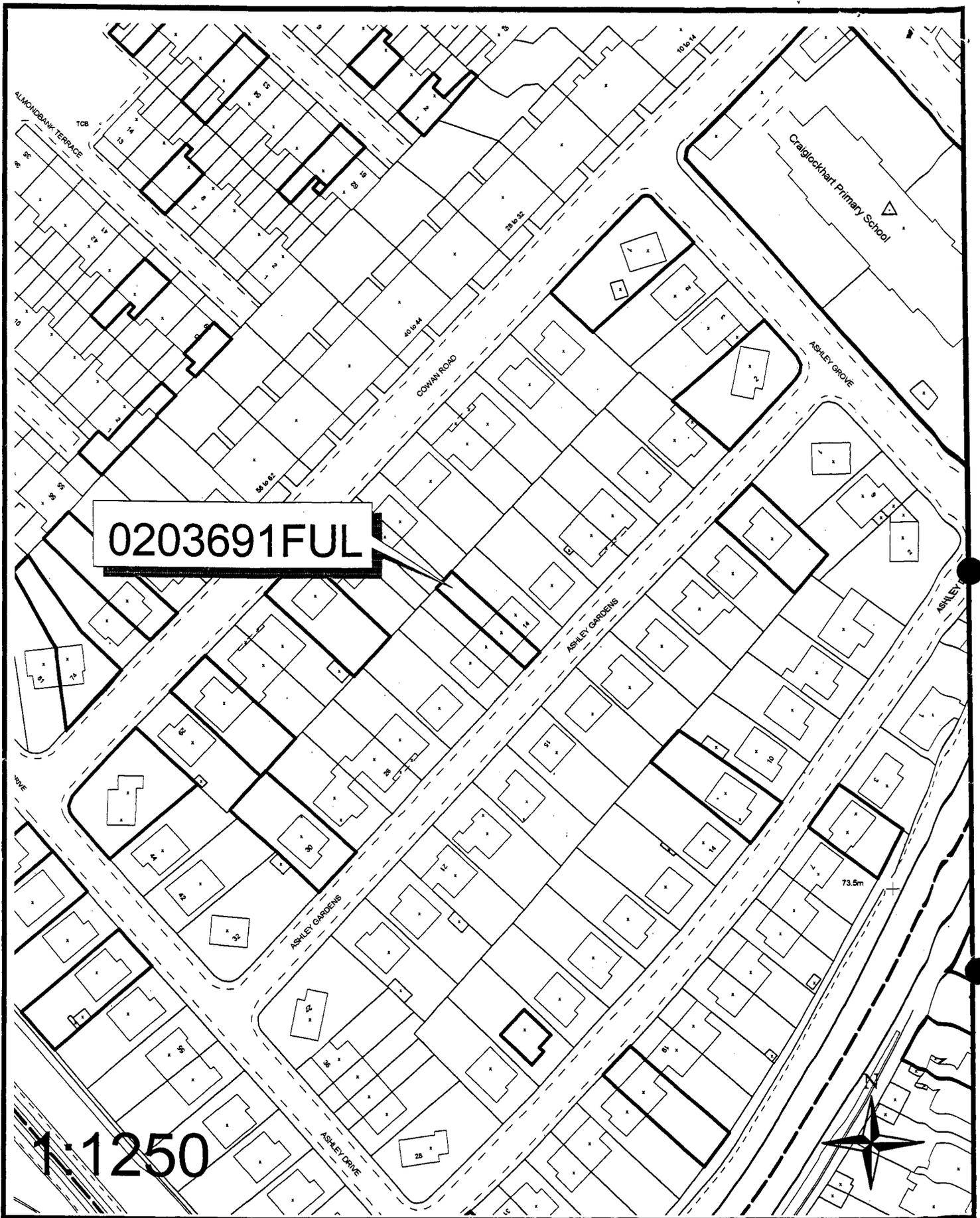
**Local Plan** Central Edinburgh Local Plan

**Statutory Development  
Plan Provision** Housing and Compatible Uses

**File**

**Date registered** 10 October 2002

**Drawing numbers/  
Scheme** 004722-5



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# PLANNING APPLICATION

The City Development Department - Planning

# • EDINBURGH •

THE CITY OF EDINBURGH COUNCIL

## Full Planning Application

at

**16 Ashley Gardens, Edinburgh EH11 1RU**

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### Development Quality Sub-Committee of The Planning Committee

#### **1 Purpose of report**

To advise the Committee on legal issues arising from the above application.

#### **2 Background**

At its meeting of 5 February 2003, the Sub-Committee considered a report by the Head of Planning and Strategy on the above application. Consideration of the application has continued and Legal Services were requested to provide a report on the legal issues which had arisen.

#### **3 Main report**

The report by the Head of Planning and Strategy confirmed that two errors had been made in the handling of the application. First, the planning officer incorrectly advised the committee that the proposal was to be pulled back 600 millimetres from the West boundary. Secondly, the originally submitted plans were sent out stamped "approved".

The advice from the Head of Planning and Strategy is that the differences in the extension between the extension as considered by committee and that shown on the "approved" plans would not constitute a departure from the Council's guidelines or the local plan. He does not therefore consider that there would be justification in planning terms to take action against the extension shown in the "approved" plans.

The law is clear that it is the notification in writing to the applicant which constitutes the planning permission, rather than the resolution of the planning authority. When interpreting a planning permission regard should only be had to the decision notice and to any documents specifically incorporated into it.

However, there are circumstances where the law can look beyond the terms of the decision notice. These are circumstances where the validity of the permission itself is in question. In the case of Norfolk County Council –v- Secretary of State for the Environment and Another (1973) 3 All ER 673 Lord Widgery said:-

"If it is accepted that a permission of some sort has been granted, I accept that the effect of the document must be gauged from its face with reference to the resolution which prompted it. But where, as here, no planning permission was

ever granted, I do not think that the principle of the Slough Estates case and others of the same line of authority prevent the planning authority from showing, if they can, that that which purported to be a permission was no permission at all.”

In the Norfolk case, a planning committee had resolved to refuse planning permission. However, an officer of the authority, in error, sent out a document granting planning permission. The officer only had authority to communicate the decision of the committee. The Court held that the planning authority were entitled to show in these circumstances that there had been no resolution to grant planning permission.

However, the current circumstances are different to the Norfolk case. There was a resolution to grant planning permission but, in error, the wrong plans were stamped as approved. A similar situation arose with another planning application at 5 Craigmount Terrace, which involved a delegated decision. Opinion of Counsel was obtained in the latter case.

Counsel referred to the above quotation in the Norfolk case. In dealing with a delegated decision, Counsel’s advice was that the Head of Planning had power to make the decision concerned. It could therefore not be argued that the person issuing the decision notice had no power to do so. Counsel advised that the prospect of successfully arguing that the permission should be reduced would be poor.

The circumstances in the present case are different again to that considered by Counsel at Craigmount Terrace. In the present case, the authority to determine the decision vested in the Sub-Committee, not in the Head of Planning. To that extent, there would be a stronger argument for saying that an officer was not authorised to issue the permission in the terms which were issued.

On the basis of the Norfolk case, it is clear that if a planning authority can show that the resolution or the authority was to refuse planning permission but, in error, an officer granted planning permission then the planning authority can argue that no permission existed at all. This can be enforced through normal enforcement action.

However, Lord Widgery in the the Norfolk case also said that “if it is accepted that a permission of some kind has been granted, ... the effect of the document must be gauged from its face without reference to the resolution which prompted it.”

This aspect of the decision would seem to suggest that if a planning authority has resolved to grant planning permission, but an error is made in the communication of the terms of that permission, then one can only look to the terms of the planning permission granted to ascertain the extent of the permission. Regard cannot be had to the terms of the resolution which prompted the permission. Having said that, Counsel’s opinion in the Craigmount Terrace case did state that an argument could be advanced in that case along

the lines of the Norfolk case but he considered the prospects of success were poor.

Standing the case law and the advice from the Head of Planning and Strategy, the following legal options are open to the Council: -

1. Enforcement action - in the Norfolk case, a planning authority were found to be correct in issuing an enforcement notice in circumstances where the committee resolution had been to refuse planning permission and a decision notice granting permission had been sent in error. In this case, planning permission does exist. It would be difficult for the Council to argue in these circumstances that a breach of planning control had taken place. In any event, the advice from the Head of Planning and Strategy is that there are not considered to be sufficient grounds to take enforcement action.
2. Action of Declarator - in the Craigmount Terrace case, Counsel advised that the mechanism of challenge would be an action of declarator and reduction in the Court of Session. This would be an expensive process. Given the advice of the Head of Planning and Strategy that he does not consider that the "approved" development would justify taking enforcement action it is suggested that court action to achieve this effect would be similarly inappropriate. This is particularly so when Counsel has advised in similar circumstances that the prospects of such challenge would be poor.
3. Revocation Order - the planning authority has power under Section 65 of the Town and Country Planning (Scotland) Act 1997, where it considers it expedient to do so, to make an order revoking or modifying a planning permission.

Such an order can only be made before the operations in the permission have been completed. It is understood that the extension has now been erected and so a section 65 order cannot now be pursued. Had it still been possible to make such an order then there would require to be planning grounds to do so. Given the advice from the Head of Planning and Strategy, a Section 65 order would not have been recommended in this case.

#### **4. Recommendations**

It is recommended that no further action is taken in respect of this matter.

  
**Jim Inch**  
Director of Corporate Services  
13.5.03

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**Appendices**

**Contact/tel** Michael Greig – 0131 529 3502

**Wards affected** Shandon

**Background  
Papers**