

**Enforcement Report into Breach of Control  
at  
3F2  
12 Kirk Street  
Edinburgh  
EH6 5EY**

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

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**Owner/s**

**Occupier**

**Reference No:** 09/00156/ELBB

**1. Purpose of Report**

**Breach of Control:**

Without listed building consent the installation of seven double glazed uPVC window units, three to the front principal south west elevation and three to the rear north east elevation. The three windows to the front have mock astragals to produce the appearance of a six over six formation, the three windows to the rear are casement windows with a one over one formation. In addition there is one uPVC window serving the dormer window to the front.

**Recommendation:**

It is recommended that enforcement action is authorised to remove the unauthorised UPVC window units.

**The Site**

**Site Description**

The site comprises a third (top) floor property within a four storey traditional stone tenement located on the north side of Kirk Street which is predominantly residential, characterised by traditional stone tenement properties with the exception of a modern housing development on the opposite side of the street.

The property is category C(s) listed (27577, listed 29.04.1977) and located within the Leith Conservation Area.

### **Site History:**

No known relevant history.

A Planning Contravention Notice was served on the owner of the property but no information was returned.

### **Representations**

One representation was received.

### **3. Assessment**

In determining whether it is expedient to take enforcement action it is necessary to consider:

1. Whether there has been a breach of planning and/or listed building control; and
2. The effect of the works on the character of the listed building.

1. The installation of UPVC window units within a flatted property which is listed requires an application for both listed building consent and planning permission. It has been confirmed that the windows were replaced over 10 years ago with no evidence to the contrary. The Council is time-barred from taking enforcement action with respect to the breach of planning control under the four year rule contained in section 124 of the Town and Country Planning (Scotland) Act 1997. The installation of UPVC window units requires listed building consent as it affects the character of a listed building. A breach of listed building control has occurred as no express grant of listed building consent has been obtained. There is no time-bar with respect to listed building enforcement controls.

2. In considering the effect of the works on the character of the listed building, it is necessary have regard to the advice contained in Appendix 1 of Historic Scotland's Memorandum of Guidance on Listed buildings and Conservation Areas 1998 and Historic Scotland's Scottish Historic Environment Policy October 2008 (SHEP). These documents set out guidelines for the treatment of historic buildings and reiterates national planning policy with regard to the preservation of listed buildings to ensure that the historic environment is cared for, protected and enhanced for the benefit of our own and future generations.

Paragraph 1.2.1 of the aforementioned appendix states that as a general rule, original doors and windows should be retained. Only when repair is clearly out of the question should replacement be accepted, and then only on the condition that the replacements match the originals in every respect.

Paragraph 1.2.4 states that where replacement is unavoidable, modern substitutes for timber sash windows should be firmly discouraged, especially those which do not replicate the outward projection of the upper sash over the lower. Great care should be taken to ensure that replacement sash and case windows match the originals in every respect. Consent for replacement windows which reproduce the astragal pattern but open in a different manner should always be refused, as should those where the astragals are merely applied to the surface of or sandwiched between the panes of double glazing.


Furthermore paragraph 1.2.11 states that the appearance and character of any building depend to a great extent upon the design and detailing of two of the building's principal elements, its wall and its windows. Any alteration to the form of one or the other is bound to have a considerable impact upon the appearance of the building as a whole. Where the alteration work is not appropriate, much of the quality and character of the building may be lost. The damage which may be caused by the replacement of any window which is historically and architecturally correct with a modern unit made from a different material, to a different design or with a different method of opening is potentially immense. Any proposal which would result in a diminution of architectural quality, no matter how small, should be refused.

Whilst it is accepted that it is not clear whether the windows which were removed were historically and architecturally correct there is a mix of one over one and six over six formations within this street, the vast majority of which are timber sash and case units. Paragraph 1.2.11 further clarifies that most replacement units, whether manufactured from timber or from other materials such as uPVC, are built from heavy un moulded sections. Such units lack the refinement and elegance of the traditional sash and case. They are consequently not convincing substitutes and should be avoided. Replacement windows which open in a different manner are never visually satisfactory and also should be avoided.

Whilst it is clear that the windows to the rear of the building are less visible than those on the front principal elevation this does not lessen the impact on the character and appearance of the building, the whole of which is listed.

There is no requirement to assess this unauthorised development against the relevant development plan policies, suffice to say such policies are supportive of the assessment that the replacement windows are unacceptable.

The materials, method of opening and proportions of the replacement windows have an adverse impact on the character and appearance of the listed building and erode its architectural integrity. There are no material considerations which outweigh this conclusion.



**John Bury**  
Head of Planning

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<b>Contact/tel</b>	Catrina Lyle on 0131 529 6475
<b>Ward affected</b>	Ward A13 - Leith
<b>Local Plan</b>	North East Edinburgh Local Plan/finalised Edinburgh City Local Plan
<b>Statutory Development Plan Provision</b>	Mixed Activities Zone/Urban Area
<b>File</b>	IDOX
<b>Date Complaint Received</b>	6 March 2009

## **Planning Policy**

### North East Edinburgh Local Plan

E18 (Listed Buildings) seeks to prevent alterations that would diminish the architectural integrity of the building.

E28 (Window Alterations) sets out criteria for assessing window alteration and replacement proposals to listed and non-listed buildings in defined areas.

### Finalised Edinburgh City Local Plan

ENV3 (Listed Buildings - Alterations and Extensions) aims to prevent alterations that would adversely affect the character of the building.

DES 11 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

### Non-Statutory Guidelines

NSG (Replacement Windows and Doors) supplements local plan conservation and design policies, providing additional guidance on window and door alterations.

### Other

Memorandum of Guidance on Listed Buildings and Conservation Areas (Historic Scotland, 1998) paragraphs 1.2.1, 1.2.4 and 1.2.11

## Appendix A

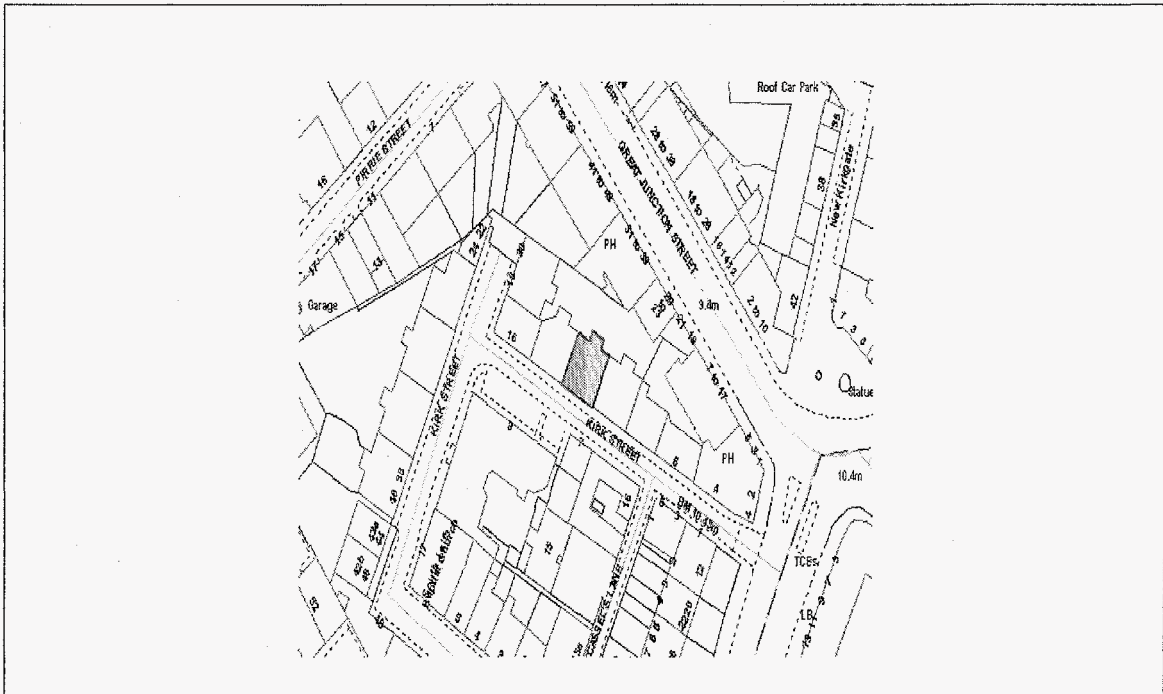
• EDINBURGH •  
THE CITY OF EDINBURGH COUNCIL

**Address:** 3F2  
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**Location Plan**

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