

## Full Planning Application 04/03947/FUL

at

15 Findhorn Place

Edinburgh

EH9 2JR

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

12 January 2005

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#### 1 Purpose of report

To consider application 04/03947/FUL, submitted by Strathedin Properties Ltd.. The application is for: **Erect frameless glazed roof terrace barrier and associated timber decking at rear**

It is recommend that this application be **REFUSED AND ENFORCED** for the reasons in Appendix B.

#### 2 The Site and the Proposal

##### Site description

The property is a detached, two and a half storey Victorian villa, on the west side of Findhorn Place, previously in use as a nursing home. The building is stone built and has had extensive alterations carried out on the rear elevation and extensions to the rear and sides. The property has recently undergone extensive renovations, in association with its return to a dwelling house. Surrounding properties are detached villas of varying sizes and are generally in residential use.

The site is within the Grange Conservation Area.

## **Site history**

99/00549 Application to Part demolish existing building and erect eight flats plus garaging, and 2 visitors' parking spaces (as amended) refused on 19 April 2000.

99/02172/FUL Application to change the use of the nursing home to house in multiple occupation approved for one year on 20/10/99.

01/01441/FUL , 01/01441/CON Applications for partial demolition of existing building and erection of residential development comprising of 10 units withdrawn 26/7/01.

01/02876/FUL - Application for change of use to guest house refused 6/02/02.

01/03391/FUL & 01/03391/CON - Applications for part demolition and erection of residential development of 7 flats refused 14/03/02.

01/03552/FUL - Change of use to a single dwelling house granted 16/11/01

02/03485/FUL - Application for erection of single garage granted 8/11/02

03/01333/FUL - Application for removal of non- original lean-to conservatory at rear and replacement of metal balustrade to roof over rear first floor section (in retrospect) refused and enforced 9/7/03.

An appeal was submitted in respect of the above decision. The appeal was dismissed on 19/11/03.

04/03152/FUL - Application for erection of frameless glazed roof terrace barrier and associated timber decking to rear withdrawn 25/10/04.

## **Description of the Proposal**

The proposal relates to the installation of a frameless, glazed barrier, around the perimeter of the roof on the first floor rear off- shoot of the original building. The application also includes the laying of timber decking on this roof and the installation of french windows in place of an original window on the rear elevation, at second floor level. These latter parts of the application are in retrospect.

## **3 Officer's Assessment and Recommendations**

### **DETERMINING ISSUES**

The determining issues are:

- Do the proposals preserve or enhance the character and appearance of the conservation area; there being a strong presumption against the granting of planning permission if this is not the case;
- 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 proposed development would detract from the character and appearance of the conservation area.

B) The proposed development would be detrimental to the amenity of neighbouring residents.

*A) The character of the conservation area is summarised in the local plan as follows:- A suburban area of villas characterised by extensive gardens and high stone walls, laid out to a plan by David Cousins between 1851 and 1870. Considerable variety exists in building styles including Italianate, Scots Baronial and Gothic - with some notable additions in the inter-war years. The main threat to the area is the over development of villa grounds and erosion of garden space and boundary walls through the sub-division of property.*

The proposed frameless, glazed barrier would be less substantial in appearance than the unauthorised, metal balustrade, formerly installed at this location. Although not directly visible from the street, the structure would however, be conspicuous from surrounding properties on Findhorn Place and Seton Place. The modern design of this structure would appear incongruous with the traditional character of the building and the surrounding conservation area, particularly given its unusually elevated position. The reflective qualities of the glazing are also likely to draw attention to the structure's presence, at this elevated location. The edge of the timber decking, in situ at the site, would also be more conspicuous, when viewed in combination with the transparent barrier, rather than the metal balustrade, previously installed. The use of timber decking at such an elevated position is not in keeping with the character of this traditional style villa and further detracts from its appearance.

The barrier and associated decking detract from the character and appearance of this traditional villa and the surrounding conservation area.

The newly installed French windows, whilst not entirely in keeping with the style and proportions of the original windows on this building, do not detract, to any significant extent, from the character or appearance of the conservation area. The concerns regarding the safety of the windows, in the event that they are retained without the enclosed balcony, would be addressed under Building Control legislation.

B) In the appeal formerly lodged, relating to the application for the metal balustrade (ref; 03/01333/FUL), the appellant alleged that the balcony had been used for many years, by the staff at the former nursing home within this building. The reporter in his assessment dismissed this allegation. The reporter concluded that this roof top area had only previously been partially enclosed and its most likely use was as a fire escape area. The installation of the timber decking in combination with the proposed barrier would now create a formal balcony, thus sanctioning its use as an outdoor amenity area (subject to consent under the Building Regulations).

The resulting balcony, would be less than 9 metres from the boundary with the adjoining properties, on either side. This contravenes guidelines on privacy. There is a distance of 18 metres between the edge of the balcony and the boundary with properties to the rear. The proposed balcony therefore detracts from the privacy of neighbouring residents and is detrimental to residential amenity.

In conclusion, it is considered that the contemporary design of the proposed barrier and the existing decking, combined with the elevated and highly conspicuous positions of these installations, would detract from the character and appearance of the villa and the surrounding conservation area. The balcony would also result in a loss of privacy to neighbouring residents.

It is recommended that the Committee refuses this application for reasons relating to the detrimental impact on the character and appearance of the conservation area and on residential amenity. It is further recommended that the Committee authorises enforcement action to secure the removal of the timber decking on the roof of the first floor rear off -shoot building.

#### ADDENDUM 1

On 12th January 2005 Committee refused this application and authorised enforcement action, in respect of the removal of the timber decking, on the roof of the first floor rear projection of this building, in accordance with the above recommendations.

Following the receipt of further information from Legal Services, it is now concluded that it would be inappropriate to authorise enforcement action. The Council would not have the powers to do so, for the following reasons:-

Enforcement action was taken in August 2003, following the refusal of planning permission on application reference 03/01333/FUL, for the removal of the 'non-original lean-to conservatory, at rear and replacement of metal balustrade to roof over rear first floor section, to secure the removal of the already constructed, metal balustrade. At the time enforcement action was taken, the new timber decking, situated on the flat roof extension was not considered to amount to development and as such did not require planning permission. Although the timber decking did affect the external appearance of the building, it did not do so to a material degree, and therefore did not fall within the meaning of development as defined in Section 26 of the Town and Country Planning (Scotland) Act 1997. The removal of the timber decking was not therefore included in the requirements of the enforcement notice as action to be taken. That notice was upheld at appeal.

Section 128(13) of the 1997 Planning Act provides that:-

"Where (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed, but does not do so, and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted ....in respect of development consisting of the construction of the buildings or works..."

Thus even if it is now considered that the installation of the timber decking does constitute development, ie; that the timber decking does materially affect the external appearance of the building, such that planning permission is required (in terms of Section 28 of the 1997 Planning Act), planning permission is treated as having already been granted by the operation of Section 128(13) of the 1997 Planning Act. The existence of the timber decking does not, therefore, constitute a breach of planning control and enforcement action cannot be taken in that respect.

In view of the above considerations, it is recommended that the decision taken by this Committee on application no. 04/03947/FUL, on 12 January 2005, is amended to withdraw the authorisation for enforcement action to be taken, to secure the removal of the timber decking. The decision should be simply to refuse the application.

Alan Henderson

**Alan Henderson**  
Head of Planning and Strategy

<b>Contact/tel</b>	Carla Parkes- Monday, Tuesday And Alternate Wednesdays Only on 0131 529 3925 (FAX 529 3717)
<b>Ward affected</b>	48 - Sciennes
<b>Local Plan</b>	Central Edinburgh Local Plan
<b>Statutory Development Plan Provision</b>	Housing and Compatible Uses
<b>Date registered</b>	26 October 2004
<b>Drawing numbers/ Scheme</b>	01,02 Scheme 1

**Advice to Committee Members and Ward Councillors**

The full details of the application are available for viewing on the Planning and Building Control Portal : [www.edinburgh.gov.uk/planning](http://www.edinburgh.gov.uk/planning).

If you require further information about this application you should contact the following Principal Planner, Barbara Cummins on 0131 529 3996. Email: [barbara.cummins@edinburgh.gov.uk](mailto:barbara.cummins@edinburgh.gov.uk).

If this application is not identified on the agenda for presentation, and you wish to request a presentation of this application at the Committee meeting, you must contact Committee Services by 9.00a.m. on the Tuesday preceding the meeting on extension 4229/4239. Alternatively, you may e-mail [blair.ritchie@edinburgh.gov.uk](mailto:blair.ritchie@edinburgh.gov.uk) or [sarah.bogunovic@edinburgh.gov.uk](mailto:sarah.bogunovic@edinburgh.gov.uk)

**Application Type** Full Planning Application  
**Application Address:** 15 Findhorn Place  
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**Reference No:** 04/03947/FUL

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## Consultations, Representations and Planning Policy

### Consultations

No consultations undertaken.

### Representations

The application was advertised on 5/11/04 and a total of 21 letters of objection were received from neighbouring residents. Letters of objection were also received from the Ward Councillor and from the Grange Association.

The grounds of objection are as follows:

- Loss of privacy to neighbouring residents.
- The proposed barrier is detrimental to character and appearance of the existing building and conservation area.
- The proposed french windows detract from the character and appearance of the existing building.

***Full copies of the representations made in respect of this application are available in Group Rooms or can be requested for viewing at the Main Reception, City Chambers, High Street.***

### Planning Policy

The application site is located in an Area of Housing and Compatible Uses as designated in the Central Edinburgh Local Plan.

Relevant Policies:

Policy CD4 (CONSERVATION AREAS) requires that developments in a conservation area retain all features which contribute to the area's character and appearance.

Policy CD5 (CONSERVATION AREAS - REDEVELOPMENT) sets out the criteria against which new development in conservation areas will be assessed, and seeks to preserve or enhance their character and appearance.

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

Policy CD16 (NEW DEVELOPMENT IN VILLA AREAS) sets out the essential requirements of approved guidelines which seek to regulate the form and layout of new development in the garden grounds of villa properties.

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

Non-statutory guidelines on 'VILLA AREAS AND THE GROUNDS OF VILLAS' provide guidance on development, to ensure the conservation and enhancement of villa areas.

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## Conditions/Reasons associated with the Recommendation

### Recommendation

To recommend that this application be **Refused and Enforced** for the following reasons

### Reasons

1. The proposed roof top barrier and the associated area of decking is incompatible, in terms of its design, materials and positioning, with the character and appearance of this traditional villa and the conservation area and is therefore contrary to the terms of policies CD5 and CD19 of the Central Edinburgh Local Plan.
2. The use of the balcony created through the installation of the proposed barrier, together with the associated timber decking, would be contrary to the terms of policy CD19 of the Central Edinburgh Local Plan and the non statutory guidelines on Daylight, Sunlight and Privacy, as it would result in the overlooking of neighbouring properties, to the detriment of residential amenity.

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End

## Appendix C

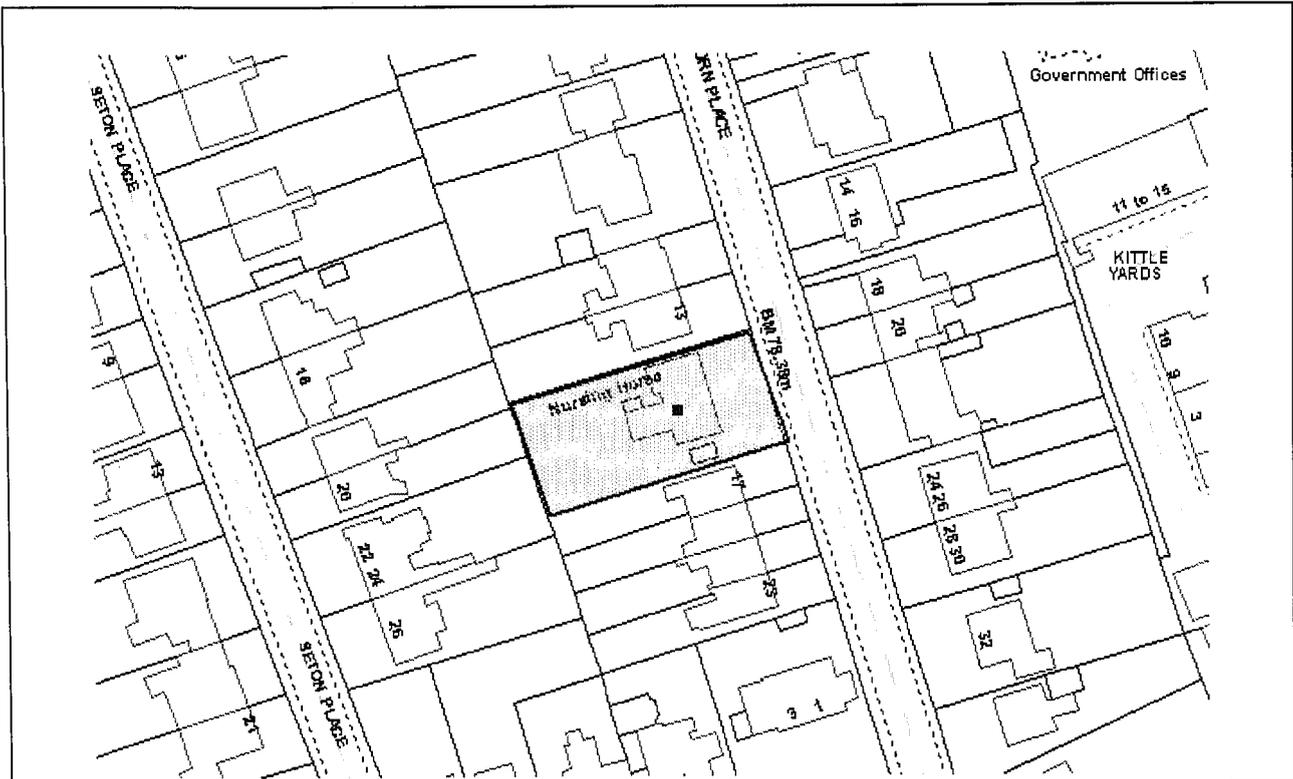


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### Location Plan



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