

Governance, Risk and Best Value Committee

10.00am, Thursday, 19 June 2014

Redhall House and Lawn – Options for Action – referral report from the Finance and Resources Committee

Item number	7.5
Report number	
Wards	Ward 9 - Fountainbridge/Craiglockhart

Executive summary

The Finance and Resources Committee on 5 June 2014 considered a report on options for action in respect of Redhall House and Lawn. The report was produced in response to a valid Petition considered by the Petitions Committee on 23 January 2014 entitled 'Save Redhall House and Lawn'. The Committee agreed to pursue Option 1 as described in the attached report and to refer the report to Governance, Risk and Best Value Committee for scrutiny.

Links

Coalition pledges	See attached report
Council outcomes	See attached report
Single Outcome Agreement	See attached report
Appendices	See attached report

Terms of Referral

Redhall House and Lawn – Options for Action

Terms of referral

- 1.1 On 5 June 2014 the Finance and Resources Committee considered a report on the options for action in respect of Redhall House in response to a valid petition brought to the Petitions Committee on 23 January 2014 entitled 'Save Redhall House and Lawn'. The report explained the current planning and legal position and set out four options for action.
- 1.2 The Council sold Redhall House and its grounds to the current owner on 14 December 2007. As part of the sale, in line with standard practice at the time, the Council imposed conditions relating to various issues including timescales for the then proposed re-development. These conditions had not been complied with and Redhall House was currently lying empty, the condition of the building having deteriorated.
- 1.3 The Finance and Resources Committee agreed:
 - 1) To agree to pursue Option 1 as outlined in paragraph 3.4.1 to 3.4.5 of the report in the first instance.
 - 2) To note that a further report detailing progress would be submitted to the Finance and Resources Committee by the end of 2014.
 - 3) To refer the report on to the Governance, Risk and Best Value Committee.
 - 4) To note that when the Council sought to dispose of heritage assets, the procedures set out in paragraphs 3.5.3 to 3.5.5 of the report were to be followed.

For Decision/Action

- 2.1 The Governance, Risk and Best Value Committee is asked to scrutinise the report.

Background reading / external references

Finance and Resources Committee 5 June 2014.

Carol Campbell

Head of Legal, Risk and Compliance

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Links

Coalition pledges	See attached report
Council outcomes	See attached report
Single Outcome Agreement	See attached report
Appendices	See attached report

Finance and Resource Committee

2.00 p.m., Wednesday, 5 June 2014

Redhall House and Lawn – Options for Action

Item number

Report number

Executive/routine

Executive

Wards

Ward 9 – Fountainbridge/Craiglockhart

Executive summary

On 23 January 2014, the Petitions Committee considered a valid petition entitled “Save Redhall House and Lawn” and resolved to refer the matter to both the Finance and Resources Committee and the Governance, Risk and Best Value Committee. This report is a response to that resolution and addresses various points raised by the Petitions Committee.

Redhall House is a category B listed building. The Council sold Redhall House and its grounds to the current owner on 14 December 2007 (shown on the plan attached at Appendix 1 coloured pink and blue respectively). As part of the sale, in line with standard practice at the time, the Council imposed conditions relating to various issues including timescales for the then proposed re-development. These conditions have not been complied with and Redhall House is currently lying empty, the condition of the building having deteriorated.

The report explains the current planning and legal position and sets out four options for action.

Links

Coalition pledges

[P40](#)

Council outcomes

[CO19](#), [CO23](#)

Single Outcome Agreement

[SO4](#)

Redhall House and Lawn – Options for Action

Recommendations

It is recommended that the Committee:

- 1.1 Agrees to pursue Option 1 as outlined in paragraph 3.4.1 to 3.4.5 in the first instance;
- 1.2 Notes that a further report detailing progress will be submitted to Finance and Resources Committee by end of 2014;
- 1.3 Refers this report on to the Governance, Risk and Best Value Committee; and
- 1.4 Notes that when the Council seeks to dispose of heritage assets, the procedures set out in paragraphs 3.5.3 to 3.5.5 are to be followed.

Background

- 2.1 At the meeting on 23 January 2014, the Petitions Committee considered a valid petition entitled “Save Redhall House and Lawn”, the wording of which is attached at Appendix 2. The Committee resolved:
 1. To refer the petition to the Finance and Resources Committee.
 2. To ask the Director of Services for Communities to arrange a meeting with the owner of the property to ascertain their intentions regarding the site.
 3. To ask the Director of Services for Communities to report to the Finance and Resources Committee on 20 March 2014 outlining:
 - i) Background to the sale of the property and the surrounding area.
 - ii) The conditions of the sale of Redhall House to the current owners.
 - iii) Reasons why the conditions of sale have not been enforced.
 - iv) Details of the current legal and planning position.
 - v) The outcome of the meeting with the owner.
 - vi) A proposed plan to deal with Redhall House and any potential future development of the site.
 - vii) Details of the lessons learned since the sale of Redhall House.
 4. To ask that the Finance and Resources Committee report of 20 March 2014 is referred to the Governance, Risk and Best Value Committee for detailed scrutiny.

5. To ask the Director of Services for Communities to ensure that any future reports to the Development Management Sub-Committee regarding the Redhall House site include background details of the petition and any further appropriate information highlighted in consideration of the petition that was pertinent to the application.

This report is a response to that resolution and seeks to address the issues raised. Following consultation with the Community Council who raised the petition, the report was delayed one cycle to allow a meeting to take place with the owner of Redhall House. It was then delayed for another cycle to enable a fresh report to be prepared which could be considered in public as opposed to a B agenda version.

2.2 **Background to the sale of Redhall House and surrounding area**

Redhall House is situated in Redhall House Drive, Craighlockhart. The house originally stood in a large estate that included stables, doocot, walled garden and ornamental gardens. The house became the Council's training centre and the land became the site of Graysmill and Cairnpark schools.

Redhall House and the remaining land adjoining it was declared surplus to the Council's requirements as part of the Fit for Future property rationalisation project.

2.3 **Development brief**

Prior to the disposal of Redhall House and grounds, a development brief was approved in April 2004. This addressed planning and design issues for the site as a whole, interpreting how the relevant planning policies should be applied. The brief's status as supplementary guidance meant that it would be a material consideration in any planning applications.

Key elements of the brief are outlined in Appendix 3. Particularly pertinent to the current situation was a recommendation that Redhall House should be retained as the principle element in an estate grounds setting, and that the open space to the side of the property is part of its immediate setting, in which development would be unacceptable.

Since the brief was adopted, the area surrounding the site, previously occupied by Graysmill and Cairnpark Schools and the Craiglockhart Young Persons Centre, has now been developed for housing by Miller Homes.

2.4 **Sale of Redhall House**

Following marketing and selection of the preferred bidder, the Council entered into formal legal missives with the now owner to sell them Redhall House and the adjacent unbuilt on land on 7 December 2007. The sale completed on 14 December 2007, and the purchase price paid for the house and adjoining land was £1,734,332. Further details of the sale are attached in Appendix 4.

2.5 **Title conditions and Deed of Real Burdens**

In 2007 it was standard practice for the Council to seek to impose certain title conditions on any property that it sold. Not all such title conditions will always be enforceable, since a party seeking to enforce them would still need to demonstrate the necessary legal title and interest to enforce, which would itself be dependent upon the particular circumstances of the matter when assessed with reference to the relevant legal tests.

Such a deed was agreed with the owner and included in the above-mentioned missives, this ordinarily being referred to as a deed of real burdens (in this report “the Deed of Real Burdens”). Details of the relevant terms of the Deed of Real Burdens can also be found in Appendix 4. The most relevant condition in the context of the petition is that the owner was to commence the re-development of Redhall House within 3 months and complete it within 2 years.

At that time, the Council routinely sold its property subject to a deed of real burdens which would, amongst other matters, contain obligations upon the purchaser of the property to repair and maintain it, insure it for a suitable amount, comply with statutory and other regulatory requirements in respect of it. Also it often imposed restrictions on what the property could or could not be used for, and how and when the property was to be developed (if it was acquired for that purpose).

This practice evolved under the former feudal system of land ownership in Scotland. These conditions were included for several reasons, including preventing landbanking, enhancing the powers available to the Council in addition to those provided by the Planning and Building Control Acts and as a result of the Council’s interest in the built heritage within Edinburgh.

However, in recent years, practice around this has changed, partly as a result of the Abolition of Feudal Tenure etc (Scotland) Act 2000, the Title Conditions (Scotland) Act 2003 and caselaw developments, which has affected the process for creating and enforcing title conditions (or real burdens as they are also referred to).

2.6 **Clawback Agreement**

As part of the sale, the owner entered into a Clawback Agreement with the Council which included the open land to the side of Redhall House.

The sale price of this open land reflected its status as land which was not considered suitable for development. The Clawback Agreement is designed to ensure that, should that situation change, and the land be sold or developed, the Council may receive a further payment. Further details of the Clawback Agreement are also set out in Appendix 4.

2.7 **Actions taken by the owner following purchase of the property**

In 2008 the owner gained listed building consent to convert Redhall House into 6 flats. An application for planning permission was recommended for approval but never issued, as the required Section 75 legal agreement was not progressed by the owner.

2.8 **Current situation**

No development has commenced on the site and the listed building consent granted in 2008 has now expired. The building remains vacant and boarded up. Its condition is a cause of concern to the local community.

2.9 **Actions taken by the Council following sale of the property**

Planning was first notified of local concerns regarding broken window panes at the site in 2010. Since that time, there has been regular contact with the owner to ensure that the building remains wind and watertight, and to encourage its restoration and reuse. The owner has responded reasonably promptly to requests to secure or repair the building. A full timeline of this contact is attached in Appendix 5.

Planning, Legal and Estates Services have been working together to consider the Council's options under both planning powers and for enforcing the conditions of sale including the likelihood of success in pursuing the provisions within the Deed of Real Burdens.

Main report

3.1 **Reasons why the conditions of sale have not been enforced**

Changes in the property market

- 3.1.1 In a situation like this one, where a property is purchased for a substantial figure representing full market value, it is usually the case that the purchaser will proceed promptly with the proposed development, in order to realise their profit from the scheme as soon as possible. Where a developer does not start work, it is often because the planned development is no longer financially viable. In this case, as outlined in Appendix 5, the owner stated on several occasions that they intended to start work.

3.2 **Options available to pursue restoration of Redhall House**

- 3.2.1 Details of the actions that could be taken to further the restoration of Redhall House are set out below.

Planning powers

- 3.2.2 There is no planning mechanism to force owners of a listed building to restore or sell. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides local authorities with two powers to intervene in the care of historic buildings:

- i. An Urgent Works Notice specifying works required to keep the building wind and watertight. If the owners do not comply with the Notice then the local authority can carry out the works and recover the costs from the owners.
- ii. Full Repairs Notice leading to Compulsory Purchase. A Repairs Notice specifies the works required for the proper preservation of the building. It can only be served where a local authority is committed to moving to Compulsory Purchase in the event that the owners do not comply with the notice. This is a time consuming and expensive measure of last resort. A more detailed summary of the Compulsory Purchase process is attached in Appendix 6. It should also be noted that any Compulsory Purchase would also need approved by the Scottish Ministers.

3.2.3 Redhall House is currently maintained in a wind and watertight condition, so could not be the subject of an Urgent Works Notice. Further, as the owner has indicated that they intend to submit a detailed planning application and has appointed a planning consultant to work with his architect, compulsory purchase would not currently be a proportionate measure. Should the promised application not materialise within an appropriate timeframe, or should the proposals be refused planning and/or listed building consent, then it may be sensible to reconsider the potential suitability of compulsory purchase at that time.

Legal Position

3.2.4 The legal position regarding enforceability of the title conditions has been the subject of a separate briefing to elected members prior to this meeting.

3.3 Meeting with the owner

3.3.1 Following the Petitions Committee, a meeting was held with the owner and their advisers to explain the decision of the Committee and to ask the owner to explain why they had not fulfilled their obligation to refurbish the property. The owner provided the following information:

- In their view the poor condition of the property was due, in the main, to wanton vandalism rather than any neglect on their part.
- They wish to assure the Council that they will continue to attend to any repairs as and when any defects arise.
- Shortly after they purchased the house they undertook a detailed development appraisal of the proposed conversion of the house into 6 flats. The appraisal indicated that the scheme would make a significant loss. The owner was not prepared to proceed with the scheme on that level of projected loss. Since 2008, they have had discussions with a number of developers, including care home operators, about a possible onward sale but none of the proposals proved to be financially viable.

The owner's intentions for the property

- 3.3.2 The owner stated that they remain committed to the refurbishment of the house and would be prepared to proceed with works even if an appraisal showed a modest loss. The owner did not give any indication of what level of loss they might be prepared to accept. They did indicate that it would have to be significantly less than the figure from their earlier development appraisal for conversion of the house to 6 flats. To reach this position the owner indicated that they would require consent to develop part of the land to the side of the property with housing. This is the ground specified in the development brief as the immediate setting of the property in which development would not be supported in terms of planning policy.
- 3.3.3 They provided figures for 12 residential options comprising up to six detached houses or alternatively up to six mews style houses. Of these, the only scheme to show a slight projected profit is the six mews houses. The property market would consider this amount of profit to be an extremely low level of financial return.
- 3.3.4 There are significant planning sensitivities associated with any proposal to develop the land to the side of the property. It was made clear to the owner that any discussions and/or subsequent application would be weighed up against the relevant planning policies and the considerations laid out in the development brief. Any application which included additional development would also be subject to a detailed interrogation of the projected development costs and profit. Importantly, the owner was made fully aware that there is absolutely no guarantee that any planning consent would be forthcoming, subject to the above due process.

3.4 Next Steps - Options for Action

Option 1: The owner's proposals

- 3.4.1 Under this option, the owner would be given an agreed time period in which to work up his proposals and submit planning and listed building consent applications for the restoration of Redhall House. This would involve pre-application discussions with the owner and their advisors to thoroughly re-examine redevelopment options for the house. Given the passage of time and changes in market conditions, it is possible that the developer will want to look at other options for renovating the house than the 6 flats originally proposed.
- 3.4.2 The primary objective of this option is to aim to achieve the refurbishment of the house in isolation.
- 3.4.3 The outcome of pursuing this option may be that the owner chooses to also submit a planning application for a scheme that includes additional development, however any such application would be assessed in the normal way in relation to

the relevant planning policies and guidance, including the 2004 Development Brief.

3.4.4 The benefit of giving the owner a period to submit a new planning application is that it could bring about the restoration and reuse of Redhall House without the Council having to intervene with time consuming and costly enforcement action.

3.4.5 The obvious drawback is that the option does not guarantee success, in the event that the applications were not submitted within the agreed timeframe, that they were not progressed by the owner or were refused, the Council would need to consider the other available options for bringing the property back into use. The agreed timescale will not extend beyond December 2014.

Option 2: Legal

3.4.6 The enforcement of legal rights against the owner has been the subject of a separate briefing to elected members prior to this meeting.

Option 3: Compulsory Purchase

3.4.7 As noted above, at the current time compulsory purchase would not be a reasonable option. However, if going forward, the owner does not take reasonable steps to properly preserve the listed building, then it is an option that could be considered. This could include, for example, if proposals were submitted which were not considered appropriate and so were not successful in gaining consents, or if consents were granted but not implemented.

3.4.8 The benefit of compulsory purchase is that the building could be passed on to a restoring purchaser for the market purchase price paid by the Council. Legal agreements could be put in place to ensure that the building was restored by that purchaser and reused within an appropriate timeframe.

3.4.9 This would require the Council to find the funds to purchase the building at a market rate (although this money would be recovered through the transfer to a restoring purchaser). As with any such compulsory purchase process, the Council would incur legal costs and there is no guarantee of success. Appendix 6 gives more detail on the process and timings involved. It is important that, given the owner's intentions to submit a planning application, it is not presently possible to pursue a compulsory purchase. Only if it is clear the owner is not intending to restore Redhall House, could the Council potentially proceed with this option.

Option 4: Do nothing

3.4.10 The final option is to leave the restoration and reuse of Redhall House to the market. It is likely that this would result in the property remaining boarded up for an unknown number of years.

3.4.11 This would have no cost to the Council and would not interfere with property rights or market forces. However, on the evidence of recent years, it is likely that

this approach would result in the continued deterioration of a prominent listed building. The site would continue to be a local eyesore, and would pose an increased health and safety risk as time went on. It is possible that the building could deteriorate to a point where it needed to be demolished.

3.4.12 This outcome would not accord with the intentions of the Council at the time of sale of the asset, or with the principles set out in planning policy and the development brief. It would also be likely to result in negative publicity and poor public perceptions of the Council, On balance it is considered that the negative outcomes of the “do nothing” approach would be significant, and this approach is not recommended.

3.5 **Lessons Learned**

Current Conveyancing practice

3.5.1 Since the sale of Redhall House, the Council’s conveyancing practice has changed in a number of ways.

3.5.2 The Council is now much more selective in the title conditions it will seek to impose upon the sale of properties. In the past, some of the conditions imposed were of a nature that were more suited to the now abolished feudal system of land ownership in Scotland and which a properly advised purchaser paying a full open market value for a property would now not be willing to accept. In addition, the challenging economic climate and restricted funding market of recent years has meant that sales have been more difficult to conclude. By not seeking to impose title conditions other than those it is considered are actually required in order to suitably protect the Council’s interests, it will often be easier and quicker to conclude sales, and enable purchasers to access the necessary funding.

Special consideration of disposal of historic buildings

3.5.3 It is clear that the Council should consider the heritage status of an asset fully when considering marketing the property for sale. When dealing with a historic building, particular care should be taken in selecting the route for disposal, the marketing campaign and the selection of a preferred bidder. Criteria for selection of preferred purchasers in these cases should include:-

- (i) schemes that retain and restore the historic asset where appropriate.
- (ii) evidence that the bidder has the financial resources and appropriate professional expertise on board and that they have a clear understanding of the complexities and sensitivities involved in the development of the historic building.
- (iii) consideration of restoration costs when identifying appropriate market value.
- (iv) best/highest bid in the context of (i)-(iii).

3.5.4 Estates Services will engage with Planning Policy at a much earlier stage especially when preparing sales particulars for historic buildings. Where

appropriate, Planning will write development briefs to provide clear guidance to potential bidders about the suitable uses and works to be carried out.

- 3.5.5 At present, Planning are consulted on both draft property particulars and often when offers are received, especially if there are planning risks associated with the bids. In the case of historic buildings, this consultation will now be carried out in considerable detail. Planning will endeavour to provide a “one stop shop” to ensure that when consulted, advice is given that takes into account all the various functions within Planning.

Historic buildings can be defined as buildings which are statutorily listed and can be extended to include traditional buildings constructed before 1919.

Other Legal Controls

- 3.5.6 In certain cases when dealing with historic buildings, it may be necessary to consider other legal controls rather than title conditions. One such option could be disposing of the property by way of a long lease rather than an outright sale. This potentially gives the Council more control over the development and use of the property with the ultimate threat of terminating the lease, however it does have drawbacks. These include potentially higher transaction costs, an impact on the number of buyers willing to purchase the property and increased funding costs or difficulty obtaining funding for the purchaser.

Conclusion

- 3.5.7 Going forward, each disposal of historic buildings will need to be considered fully to ensure that the most appropriate disposal method, and any proposed conditions, are appropriate in a particular case. It is also vital that Estates Services engage at an earlier stage with Legal Services and Planning.

Measures of success

- 4.1 Encouraging the restoration of a listed building would help meet the Council’s objective to conserve Edinburgh’s built heritage.

Financial impact

- 5.1 The cost involved in pursuing option one as recommended will be limited to staff time and minor expenses. There are potentially far greater costs involved in pursuing option two or three, with those in respect of option two having been the subject of a separate briefing to elected members prior to this meeting. These costs have not been provided for in the Council budget planning.

Risk, policy, compliance and governance impact

- 6.1 Finance and Resources Committee has been asked by Petitions Committee to refer this report to Governance, Risk and Best Value Committee for its consideration. For option three, a case for compulsory purchase would be made to the Scottish Government for their determination.

Equalities impact

- 7.1 By pursuing option one, it will enhance the local communities right to participation, influence and voice.

There could be a negative impact on the owner's rights to standard of living and individual family and social life if they are pressed into pursuing a development that they would not otherwise take forward. This potential impact is held to be proportionate and justifiable given the benefits of pursuing option one however consideration will need to be given to this potential impact when taking this forward.

If the committee resolves to pursue either option two or three, there will need to be a full Equality and Rights Impact Assessment of the impact of these options.

Sustainability impact

- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and the outcomes are summarised below:

- The proposals in this report will increase carbon emissions because a currently vacant building will be brought back into use and this impact will be addressed by the need for the restoration plans to comply with planning and listed building consents and building control regulations. Reusing an existing building rather than utilising new build will help mitigate the impact
- The need to build resilience to climate change impacts is not relevant to the proposals in this report because it relates to the reuse of an existing building
- The proposals in this report will help achieve a sustainable Edinburgh because local residents and the community council are some of the main drivers behind the desire to restore this listed building to enhance the local area and reuse of this building to provide dwelling houses in the place of a derelict building will benefit the local community.

Consultation and engagement

- 9.1 The driver behind this report is a petition submitted by the local community council to the Petitions committee. Through the petition, the local community have been given the opportunity to engage on this issue.

Background reading / external references

N/A

John Bury

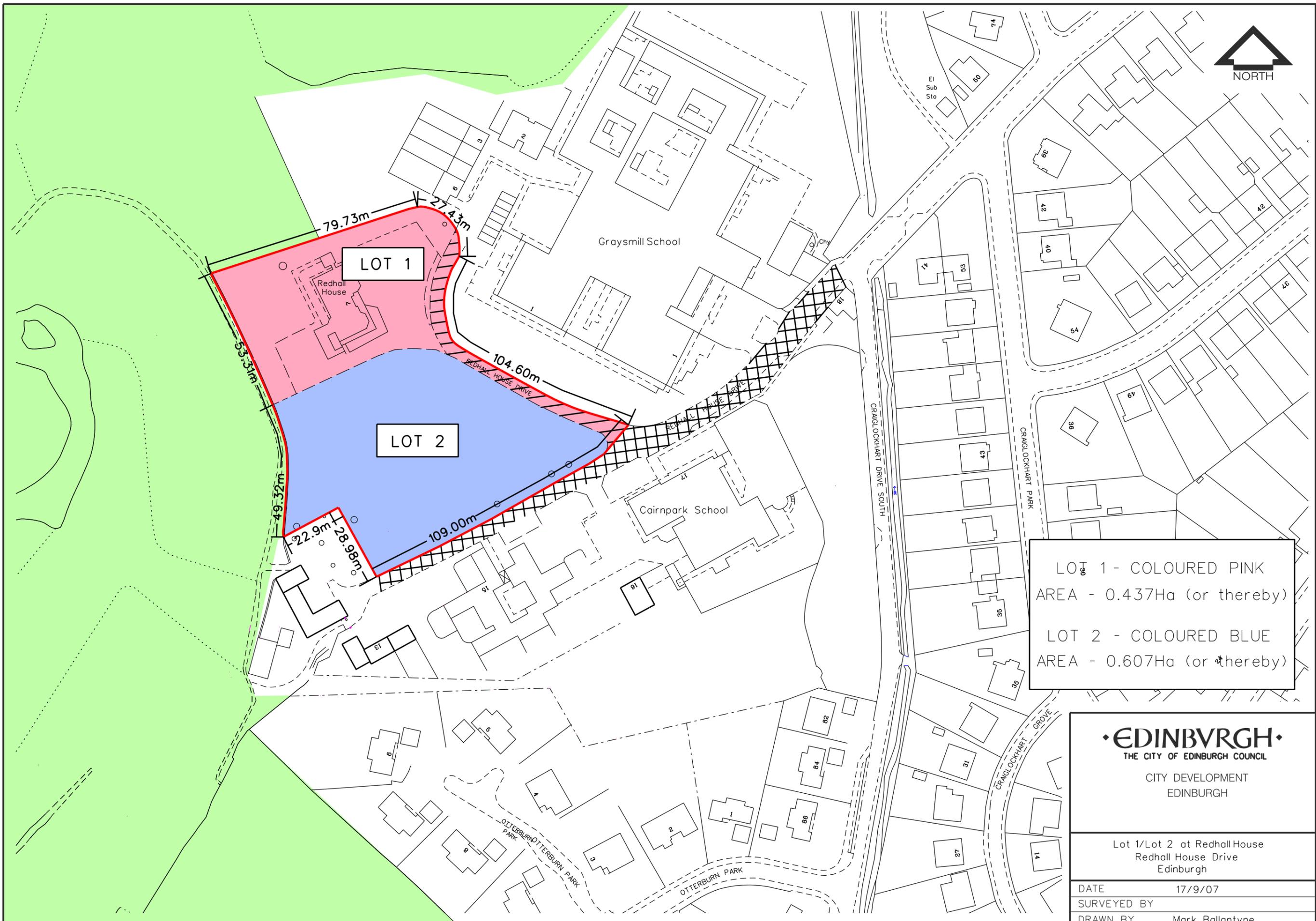
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Links

Coalition pledges	P40 Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city's built heritage.
Council outcomes	CO19 Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm. CO23 Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community.
Single Outcome Agreement Appendices	SO4 Edinburgh's communities are safer and have improved physical and social fabric. Appendix 1 – Location Plan. Appendix 2 – Wording of petition Appendix 3 – Key elements of Development Brief. Appendix 4 – Further legal information Appendix 5 – Planning timeline. Appendix 6 – Compulsory Purchase Process.



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• EDINBURGH •
 THE CITY OF EDINBURGH COUNCIL
 CITY DEVELOPMENT
 EDINBURGH

Lot 1/Lot 2 at Redhall House Redhall House Drive Edinburgh	
DATE	17/9/07
SURVEYED BY	
DRAWN BY	Mark Ballantyne
FILE NO.	
NEG. NO.	A3/866A

SITE PLAN

SCALE 1:1250

Wording of petition

The petition was submitted by Craiglockhart Community Council on 26 November 2013.

“Regarding the conditions for protecting Redhall House and Estate, please view the Council’s own Development Brief of 2004 and the Deed of Conditions of Sale of 2012.

We note with disappointment that the B-listed Redhall House, above the Water of Leith in Craiglockhart, has lain empty for six years now and that during that period its condition has visibly deteriorated such that it has been placed on the Buildings at Risk Register.

We note that when the Property was sold by the City of Edinburgh Council in 2007, conditions were placed on its re-development and maintenance which have not been observed.

We call on the City Council to ensure that the conditions placed on it at the time of sale are adhered to so that the Property is maintained, renovated and occupied in such a way that also preserves in full the setting of the open space around it.”

Key Elements of Development Brief

Key elements of the brief were:

- Proposals for the site should take full account of the special character and historic interest of Redhall House, doocot, stables, lodge house and boundary walls;
- Suitable uses for Redhall House include serviced offices, a single dwelling house, or subdivision into flats;
- Redhall House should be retained as the principle element within an 'estate grounds' setting;
- The open space to the south, west, north and north-east of Redhall House are part of its immediate setting, and development here would be unacceptable;
- The rest of the site forms the wider setting of the house, and development in the grounds should not "*simply take as its starting point a typical suburban layout with a mix of standardised house designs*". Potential threats to the setting of the building included:
 - Insufficient separation of the house and grounds from its surroundings,
 - The use of standardised house designs, materials and miniaturised proportions,
 - Excessive encroachment of new development into the setting of the main house,
- Ground and first floor rooms of architectural quality should not be altered;
- No extensions to the building would be considered;
- A full historic building survey and photographic record should be undertaken;
- If the building should become vacant, preventative measures should be put in place to ensure that the house is not at risk from theft, vandalism or deterioration.

Further Legal Information

Details of sale

Sale of property

The Council entered into formal legal missives with the owner to sell them Redhall House and the adjacent unbuilt on land on 7 December 2007. The sale completed on 14 December 2007, at which point. The owner paid the balance of the £1,734,332 purchase price, having already paid a non-refundable deposit of £173,433 when missives were concluded.

The price to be paid by the owner was split as follows, £1,500,666 for Redhall House itself and £233,666 for the adjoining landscaped area.

The owner also met the Council's internal legal and surveying costs.

Deed of Real Burdens

The Deed of Real Burdens for the Site provided that "the [owner] shall be bound at the [owner's] own expense as soon as reasonably practicable after the date of entry to [the Site] namely the 14th day of December 2007 (and in any event within 3 months of the said date of entry) to commence the Development [itself defined as "the whole external refurbishment/renovation and conversion of Redhall House into a private dwellinghouse or houses or sub-divided into flatted dwellinghouses and upgrading the remainder of Redhall House in accordance with plans to be approved by the Council]" ... and that according to the [said approved plans], and the [owner] shall ensure that the Development [as so defined] progresses continuously and is completed within 24 months of the said date of entry or within such extended period as may be approved by [the Council] which approval shall not be unreasonably withheld or delayed...such permitted extended period or aggregate of permitted extended period being no more than 3 months....". In summary, the owner was to commence their development within 3 months and complete it within 2 years.

In addition, the owner was further obliged to keep the external stonework and paintwork of the building in good condition and repair to the reasonable satisfaction of the Council, and uphold and maintain the development once completed in good and substantial repair and condition in all time coming. The Deed of Real Burdens also contained other provisions that were fairly standard at the time for the Council, including specific obligations upon the owner to insure the property in an appropriate manner, comply with all relevant statutes and legal requirements in respect of the property. The Deed of Real Burdens also provided that certain activities were prohibited on the site (such as a public house or a business, with Redhall House only to be used for residential purposes).

Clawback agreement

This provides that the owner cannot dispose of their interest in the land adjacent to Redhall House prior to 13 December 2022 except (i) to a third party at market value or (ii) to a maximum of 5 relatives for nil consideration.

The effect of the Clawback Agreement is that, in essence, if within the above mentioned period the owner sold some or all of the adjacent land before it was developed, the Council would receive 50% of any profit the owner makes, or if they sold the adjacent land following any future redevelopment then the Council would receive a sum calculated by multiplying the gross internal area of the units developed on the adjacent land by a base figure of £131 (which sum would in turn be subject to indexation). By way of explanation, if relatives of the owner acquired parts of the adjacent land, they would be obliged to enter into a Clawback Agreement in the same terms. There were similar restrictions in connection with their ability to dispose of Redhall House itself, but these only applied until 13 December 2012 and have now expired.

The Clawback Agreement is otherwise in fairly standard terms in the protections it affords the Council.

If the owner obtains the necessary consents to develop the adjacent land, then they are to use all reasonable endeavours to complete the same within 2 years. The Council's rights under the Clawback Agreement are further protected by a second ranking standard security in favour of the Council over the Site. The standard security provides the Council with greater remedies in a situation where the owner defaults on payment than would be present without it. The Council ranks only behind the owner's bank in the list of creditors.

History of Planning involvement with the property

In 2008 the owner gained listed building consent to convert the property into 6 flats (08/01205/LBC). An application for planning permission (08/01204/FUL) was recommended for approval but never issued, as the required Section 75 legal agreement was not progressed by the owner.

Planning was first notified of local concerns regarding broken window panes at the property in 2010.

Letters were sent to the owner in February, April and September 2010, requesting that the building be made wind and watertight, and advising that should this not be carried out, the Council has powers under The Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 to undertake the works and recover the costs from the owner.

In November 2010, the owner confirmed that the works to make the building wind and watertight would take place.

The following year of 2011, the owner carried out repairs to make the building wind and watertight.

Further monitoring was undertaken to ensure that the building was kept in a wind and watertight condition. Letters and emails were sent to the owner during 2011, identifying additional urgent works as they came up, and requesting that they be carried out.

Liaison with Legal Services resulted in a letter being sent to the owner in September 2011 referring to the requirement in the conditions of sale that the building be restored, confirming that the Council considers them in breach of those conditions and seeking confirmation of when work would commence.

Following a fire in the property on 10 November 2011, the owner agreed to meet with Planning Officers to discuss the future of the building.

A meeting was held on 29 November, where the owner advised that they wished to develop part of the land to the side of the property (the area designated as part of the immediate setting of the house in the Development Brief). Planning advised that this proposal did not comply with the guidance in the development brief but that they should submit the proposals for full assessment. No proposals were submitted.

Throughout 2012, further correspondence was sent to the owner requesting various minor repairs to keep the building wind and watertight, including boarding up windows and damaged skylights, securing doors, and removing graffiti. These repairs were generally undertaken.

Enquiries were made as to the intentions of the owner with regard to comprehensive restoration and reuse. The response continued to be that it was intended to get underway shortly.

In June 2012 the building was added to the national Buildings at Risk Register (www.buildingsatrisk.org.uk) by the Buildings at Risk Service who are part of the Royal Commission on the Ancient and Historical Monuments of Scotland

During 2013, correspondence with the owner continued, including regular requests that Planning Officers be allowed to access the building. In March, a further formal letter was sent, setting out the potential for formal action in relation to the Deed of Real Burdens. The owner then advised that they intended to implement the approved listed building consent (08/01205/LBC).

In May 2013, The owner advised that they intended instead to revert it to use as a single dwelling and start work shortly.

In June 2013, the listed building consent lapsed, and access to the building was granted to Planning officers. At that time it was seen to be wind and watertight, though clearly in need of comprehensive refurbishment. Externally, the stonework, harling and roof were all in reasonable condition. While the boarded up windows were unsightly, the boards were necessary for security.

The owner advised again that their aspiration was to gain consent for conversion of the building to flats or serviced apartments, and for refurbishment works to have started by the time Miller Homes finished the phase of their adjacent development in December 2013. However, they also stated that any refurbishment of the property would make a loss unless the land at the side could be developed. Planning advised that, prior to entering into any discussions about such proposals, the owner would need to provide a financial analysis to demonstrate that there is no economically viable alternative.

Regular requests made to the owner for further information about their intentions/proposals. He continued to respond that proposals were being progressed.

Continuing monitoring of condition of building and advising the owner of any work that required to be carried out.

In January 2014, the owner engaged a Planning Consultant and requested a meeting to discuss the options for the restoration of the building.

A joint meeting involving the owner, Planning and Estates was held on 7 February. The outcome of this meeting is detailed in the foregoing report.

Compulsory Purchase process

Under Section 42 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, a planning authority is empowered to compulsorily acquire a listed building which is not being properly preserved.

Compulsory Purchase proceedings require confirmation from Scottish Ministers.

The Council has the choice to either line up a restoring purchaser prior to serving the Compulsory Purchase Order or to proceed alone. Lining up a restoring purchaser in advance has the benefit of minimising the cost incurred by the Council and could mean a quicker restoration of the building once it has been purchased by the Council. The timeline below assumes the Council wishes to work in partnership with a restoring purchaser.

Timeline

The legal complexities surrounding compulsory purchase are such that the process is almost always lengthy. A straightforward case may be determined within 6 months, however a recent case in Leslie, Fife, took seven years to determine. A timeline summarising the key steps is detailed below:

- 1) Firstly, there must be a clear case to show that the owners are not intending to restore the building: Councils must be reasonable in allowing owners sufficient time to demonstrate whether they do intend to carry out works.
- 2) Time should be allowed for gathering evidence (surveyors reports, valuations etc) and lining up a restoring purchaser (through a formal procurement process).
- 3) A legal agreement is drawn up with the approved restoring purchaser, in which they agree to restore the building within an agreed timescale. The restoring purchaser may wish to gain the relevant planning and listed building consents to gain comfort that they will be able to take forward their proposed scheme, prior to signing a legal agreement committing them to a costly restoration.
- 4) Prior to the formal initiation of compulsory purchase proceedings, the Local Authority must serve a Repairs Notice detailing the full schedule of works required to bring the building to a state of proper preservation on the owner.
- 5) Once the Repairs Notice is served, owners have two months in which to carry out (or substantially initiate) the works.
- 6) If the works are not carried out, the Council can serve a Compulsory Purchase Order on the owner, and submit the Order and supporting documents to Scottish Ministers. The owner then has up to 28 days to submit any objections to the order to Scottish Ministers.
- 7) If there are objections, then Scottish Ministers may decide to hold a public hearing.
- 8) Scottish Ministers will then weigh up the case and confirm or refuse the Order.