

**Listed Building Consent Application 05/01366/LBC  
at  
13 Minto Street  
Edinburgh  
EH9 1RG**

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

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**1 Purpose of report**

To consider application 05/01366/LBC, submitted by Mr Lyons. The application is for: **Erection of 0.9m high fence on street boundary and in garden (retrospective).**

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

**2 The Site and the Proposal**

**Site description**

The site is the front garden of a former villa on the west side of the street, latterly known as Haig Memorial House, and situated on the corner of Mayfield Terrace.

The building is category C(S) listed, circa 1840 with later 19th century alterations. 2-storey, 3-bay, near symmetrical, classical house with 2-storey wings adjoining to N and S; extensive additions to rear.

The site is in the Blasket Conservation Area.

## **Site history**

February 2001 - Planning permission and listed building consent granted for conversion to 7 flats (00/3012/FUL+LBC).

October 2001 - Planning permission refused for change of use from residential home for ex-servicemen into a children's nursery facility (01/1183/FUL).

December 2001 - Planning permission granted for redevelopment to create multiple occupation residential facility with communal lounges, kitchen, bathrooms etc and change of use (01/2892/FUL).

February 2002 - Planning permission granted for change of use from nursing home (class 8) to children's day nursery facility (class10) for 59 children (as amended) (01/03850/FUL).

June 2003 - Planning permission granted for a Variation to Condition 2 of original consent to read: 'the hours of operation shall be restricted to 0700 to 1900 Monday to Friday only' (03/883/FUL).

July 2003 - Advertisement consent Refused and Enforced for a sign in the front garden of property, demonstrating existence of children's nursery (in retrospect) (03/1609/ADV).

November 2004 - Planning permission granted for the extension of operating hours from 0730 to 1900 Monday to Friday (as amended) (04/3029/FUL).

November 2004 - Planning permission granted for Variation of Condition 3 of 01/3850/FUL to allow the accommodation of 80 children at any one time in the premises (as amended) (04/3030/FUL).

November 2004 - Planning permission granted for Variation of Condition 8 of 01/3850/FUL to allow 15 children in the rear garden at any one time (04/3031/FUL).

April 2005 - Enforcement Inquiry regarding the fence (05/268/E01).

## **Description of the Proposal**

The application is in retrospect for a 0.9m high timber slatted fence around the two front lawned and border areas and set back at the front by 1.15m behind the 1.5m high hedge.

### **Applicant's Supporting Statement**

This letter indicates that the fence, amongst other things, is to allow under 2 year olds to play in the front garden without fear of injury, leaving the rear

garden for over 2 year olds. The document is available for inspection in the Party Group Rooms.

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

#### DETERMINING ISSUES

The determining issues are:

- Do the proposals preserve the building or its setting or any features of special architectural or historic interest which it possesses? If they do not, there is a presumption against the granting of consent;
- 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 the determining issues, the Committee needs to consider whether the proposals have an adverse impact on the character of the listed building.

Whilst the fence is undetectable from across the street, close up, looking across the front hedge, the fence can clearly be seen. Its many returns, materials, design and colour are highly visible and incongruous in the front garden of such a period villa as this. The fence abuts the building and in other test cases in Britain this 'abutting' has been held to effectively mean attachment to the listed building for the purposes of determining whether listed building consent is required.

The applicant has submitted a supporting statement but this does not outweigh the fact that the fence is detrimental to the curtilage of the listed building and therefore to its character and setting.

It is considered that the rear garden is capable of being adapted to enlarge the enclosure area for older children by reducing the gravel parking area, or subdividing the existing enclosure. Approval in this instance of the fence existing in the front garden would set an unacceptable precedent which the planning authority would have difficulty in refusing on other sites in future, leading to potential loss of character for several properties within the City.

The proposals do not comply with the policies stated and adversely impact on the character and setting of the listed building.

There are no other material planning considerations which outweigh this conclusion.

It is recommended that the Committee refuses this application, on the grounds of affecting the character and setting of the listed building and resolves to take enforcement action against the unauthorised works.

Alan Henderson

Alan Henderson  
Head of Planning and Strategy

<b>Contact/tel</b>	Duncan Robertson on 0131 529 3560 (FAX 529 3717)
<b>Ward affected</b>	50 - Prestonfield
<b>Local Plan</b>	Central Edinburgh Local Plan
<b>Statutory Development Plan Provision</b>	Housing and Compatible Uses
<b>Date registered</b>	25 April 2005
<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, Martin Easson on 0131 529 3989. Email: [martin.easson@edinburgh.gov.uk](mailto:martin.easson@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)

## Appendix A



**Application Type** Listed Building Consent Application  
**Application Address:** 13 Minto Street  
Edinburgh  
EH9 1RG

**Proposal:** Erection of 0.9m high fence on street boundary and in garden (retrospective).

**Reference No:** 05/01366/LBC

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### **Consultations, Representations and Planning Policy**

#### **Consultations**

No consultations undertaken.

#### **Representations**

The application was advertised on 13 May 2005. Three letters of objection has been received:

The Blacket Association formally objects to the retrospective application on the grounds that it affects the setting of the listed building.

A neighbour objects on grounds of visual intrusion and character of Blacket Conservation Area (The latter comments are not relevant to listed building considerations).

***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 site is allocated as Housing and Compatible Uses in the Central Edinburgh Local Plan.

Relevant Policies:

Policy CD2 (LISTED BUILDINGS) sets out criteria for assessing proposals affecting listed buildings and seeks to safeguard their character and setting.

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.

Non-statutory guidelines 'ALTERATIONS TO LISTED BUILDINGS' provide general guidance for assessing proposals for both internal and external alterations.

Non-statutory guidelines on the 'SETTING OF LISTED BUILDINGS' supplement local plan conservation and design policies, providing guidance for the protection and enhancement of the setting of listed buildings.

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## Conditions/Reasons associated with the Recommendation

### Recommendation

It is recommended that this application be **REFUSED AND ENFORCED** for the reasons below.

### Reasons

1. The proposal is contrary to Central Edinburgh Local Plan Policy CD2, in respect of Listed Buildings, as the fence diminishes the architectural integrity and setting of the listed building.
2. The proposal is contrary to Central Edinburgh Local Plan Policy CD17, in respect of Materials, as the fence is not appropriate to the listed building because of its position and extensive use of timber.
3. The proposal is contrary to Central Edinburgh Local Plan Policy CD19, in respect of Building Alterations, as the design, materials and positioning are not compatible with the character of the original building.
4. The proposal is contrary to Non Statutory Guidelines in respect of Alterations to Listed Buildings, as the fence enclosures are detrimental to the visual appearance of and the character of the listed building
5. The proposal is contrary to Non Statutory Guidelines in respect of the Setting of Listed Buildings, as the fence detrimentally affects the immediate setting of the listed building in relation to its front garden.

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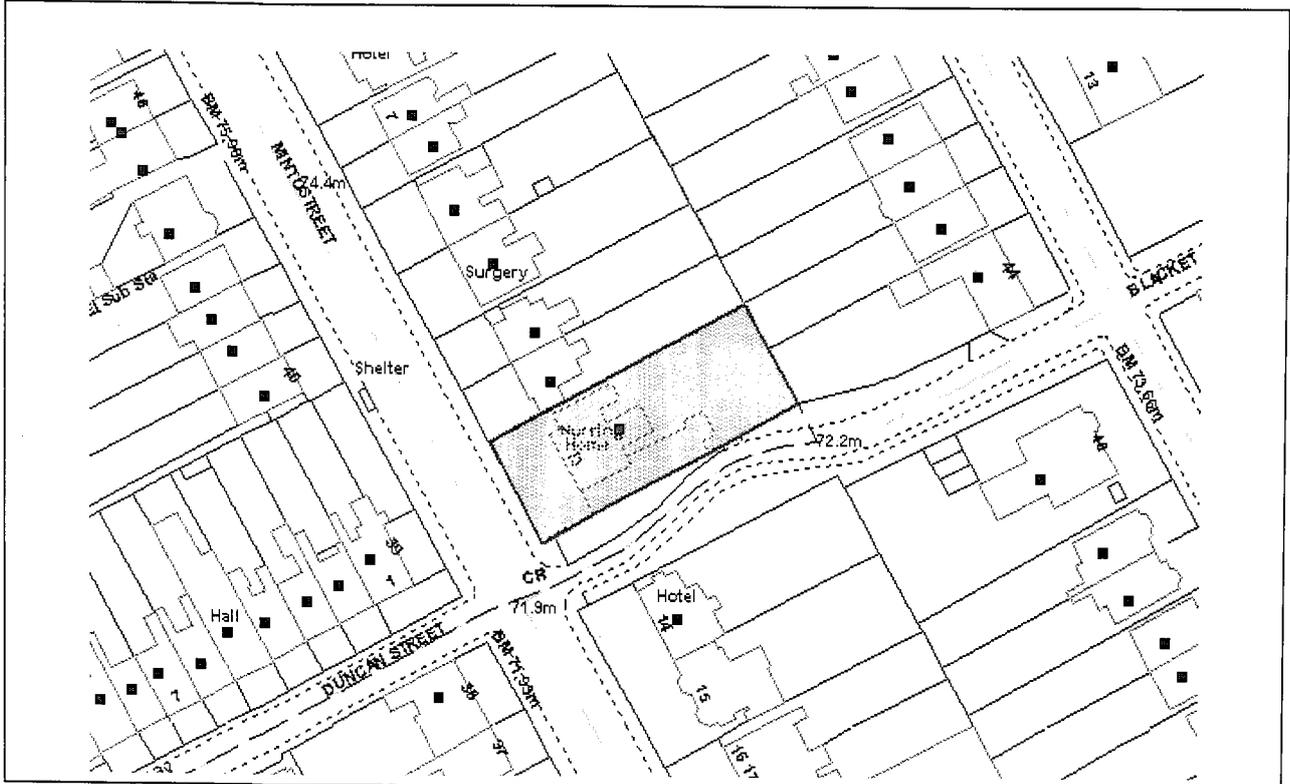
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### Location Plan



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