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Decision by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2205
- Site address: 83 Pentland View, Edinburgh, EH10 6PT
- Appeal by Chamberlain Bell Limited against the decision by City of Edinburgh Council
- Application for planning permission 16/02397/FUL dated 24 May 2016 refused by notice dated 28 April 2017
- The development proposed: Demolition of existing building, erection of 37 flats, formation of new site entrance and parking area, landscaping and other associated works
- Date of site visit by Reporter: 12 September 2017

Date of appeal decision: 6 October 2017

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## Decision

I dismiss the appeal and refuse planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

## Development plan

2. The development plan consists of the South East Scotland Strategic Development Plan (SESplan) approved in 2013 and the City of Edinburgh Local Development Plan (LDP), formally adopted in November 2016. SESplan provides the strategic planning framework for the whole of South East Scotland and it is not intended to provide detailed guidance on an individual development proposal and my attention has not been drawn to any policies that are relevant to the appeal.

3. I have been referred to a number of policies from the Design Principles for New Development, Caring for the Environment, Housing and Community Facilities and Transport chapters contained within part 2 of the LDP. Although these policies cover a variety of topics, with the exception of Policy Hou 1, it seems to me that in essence, they all relate to the design of the proposal. I therefore consider that the determining issues in this appeal are the principle of re-development and whether the design of the proposal is appropriate to its site and context.



4. In my judgement, the adequacies of any design needs to be considered comprehensively, taking all relevant matters into account. However, for convenience, I consider general design considerations, impact on residential amenity, impact on trees, development density and parking under separate sub headings below before reaching my overall conclusions on the adequacy of the design of the appeal proposal.

#### *Principle of development*

5. Policy Hou 1 sets out the principles for new housing development to meet the acknowledged housing needs of Edinburgh. Criterion 1 (d), indicates that suitable sites within the urban area, subject to compliance with other policies, are a means to deliver new housing developments. Subject to my comments regarding the retention of the existing building below, I find no objection to the appropriate re-development of the appeal site for new housing. I note that the council also maintains no objection to the principle of an appropriate re-development.

#### *General design considerations*

6. Policies Des 1, Des 3 and Des 4, when considered together, seek to make sure that the design of new development is appropriate to the character and appearance of the surrounding area. Policy Hou 3 relates to the amount of green space in new development and so for convenience I have considered these requirements alongside the general design policies because they are closely inter-related.

7. I agree with the appellant that the general locality is predominantly residential, with the exception of the nearby primary school. I accept that there are a mix of styles and materials in the locality. However, the predominate built form is two storey houses or chalet bungalows, typical of many housing areas. The two existing blocks of flats immediately to the south of the site are an obvious exception to mainly conventional housing development.

8. The site itself is not typical of the area. It is larger than the surrounding housing plots and is surrounded by a wall. An older style house is set within generous grounds with mature individual tree specimens to the front and a tree belt on adjoining land along the southern boundary. This tree belt, along with other areas of small woodland is, in my opinion, an attractive characteristic of the area. I do not believe that the site is currently read as being part of either the housing area or the two blocks of flats. I consider that currently the site acts as a transition between the two flats and the wider housing area.

9. The proposal is mainly four storeys and has a total depth of approximately 50 metres along an east/west axis. It is positioned on the site along the edge of the tree canopy of the tree belt to the south and set back from the frontage leaving approximately 8.6 metres to the rear western boundary wall at its closest point.

10. I agree that setting the building back from Swan Spring Avenue retains three of the four specimen trees and minimises the visual impact from this road. However, in doing so it significantly increases the view of the building from surrounding properties and the open space and footpath to the rear. This projection of a four storey building so far to the rear would be in marked contrast to the pattern and scale of the surrounding two storey houses. In my opinion, the scale and form of the proposal results in an unduly dominant and

prominent building that I believe would significantly detract from the character and appearance of the area.

11. I accept that the total height of the proposal is within the range of the other scale indicators such as the adjacent flats and surrounding mature trees. The dominance and prominence is due to the height in combination with the depth of the building along its east/west axis resulting in a building of considerable visual bulk. I believe that this is illustrated in the appellant's submitted photomontage - document 009.

12. I accept that the existing flats at 1 and 2 Pentland Drive are also tall, visually bulky buildings compared to the surrounding houses. However, both the two existing flats have a more generous setting, do not utilise a linear form and as a consequence have a reduced maximum depth. I would agree with the description provided by the council that the two existing flats are "*quieter and more respectful buildings*" than the proposal.

13. I also accept that the tree belt along the southern boundary, when in full leaf, would provide a significant level of screening. However, this would be diminished in the winter months. In any event, I do not believe that a building is perceived from only one viewpoint. A building is perceived from a combination of many views. I consider that the tree belt on the southern boundary would do little to disguise the overall bulk of the proposal.

14. I accept that mathematically the proposal achieves the minimum required amenity area for each flat and exceeds the minimum acceptable site coverage. However, it is only able to do so because of the area of land between the building and southern boundary. I do not consider that much of this area, mainly under the tree canopy, on slightly sloping land and with considerable undergrowth can be considered to be useable amenity space. The majority of the current useable amenity space is required for block A and for car parking.

15. Overall, I do not believe that the proposal results in a sensitive transition between the existing flats and housing area. Instead, I believe that the proposal would appear as a building with an excessive visual bulk that would be unduly dominate and prominent. This would be readily perceived by anyone using the surrounding streets, from many nearby houses and their gardens and from the rear public open space and footpath. The proposal would be damaging to the character and appearance of the area and therefore would not comply with the planning objectives of the relevant design policies of the LDP.

#### *Residential amenity*

16. Criterion (a) of Policy Des 5 relates to the amenity of neighbouring developments. On my accompanied site visit I took the opportunity to view the proposal from the rear garden of 76 Swan Spring Avenue.

17. In assessing overlooking it is necessary to consider what can be physically seen from the proposal as well as how this would be perceived from nearby houses and gardens. Block C has bedroom windows facing north. I accept that people do not generally spend time looking out of bedroom windows. I note that on the third floor of block C there is a large external sitting out area. Block D has balcony areas facing north and main living room windows facing east. I appreciate that any views that there may be of the garden areas of

76 and 78 would be in the context of wider panoramic views of a larger area. I recognise that a degree of casual overlooking is commonplace in many residential areas and existing vegetation provides a degree of screening.

18. However, from the perspective of anyone using the rear garden areas of 76 and 78 they would see 11 main windows on the northern elevation, 6 main windows on the eastern elevation (i.e. excluding ground floor and secondary windows) as well as the balcony areas for Block D and one flat in Block C. I have no doubt that anyone using the rear garden of 76 or 78 Swan Spring Avenue could not fail to feel being overlooked and visually dominated.

19. Furthermore, the visitor parking area adjacent to the rear boundary of both properties is at a slightly higher level than the existing ground level. Even with the provision of additional screening, anyone using the rear garden areas of 76 and 78 would be aware of the presence of cars and likely to be disturbed by the comings and goings associated with the visitor parking area, the use of the new rear pedestrian access and the car parking areas generally.

20. In combination, I have no doubt that the appeal proposal would significantly diminish the reasonable enjoyment of the rear garden areas of 76 and 78 Swan Spring Avenue to the point where the relationship is unacceptable in planning terms. I consider that the proposal would have an adverse impact on these two neighbouring properties and that the proposal is therefore contrary to criterion (a) of Policy Des 5.

#### *Impact on trees*

21. Policy Env 12 seeks to protect existing trees unless there are arboricultural reasons for their removal. The arboricultural report prepared on behalf of the appellant graded tree number 4409 a category A tree. Category A is defined as, “*high quality and value with an estimated life expectancy of at least 40 years*”. The tree is one of what I described as a specimen tree in front of the existing property and I concur with this assessment.

22. There is no arboricultural justification for the removal of tree number 4409. It is proposed to be removed in order to accommodate the car parking area considered necessary to accommodate the number of flats proposed.

23. The appellant also identifies the need to trim the canopy of two trees on the southern boundary of the site to allow the proposal to be built. I am concerned about the practical implications of a proposal that is reliant on the regular trimming of trees subject to a tree preservation order simply to prevent them touching a new building. This reinforces my concerns about the siting of the building.

24. In my experience, a practical assessment of the likely impact of the proposal on the trees within and adjacent to the site is necessary to understand the overall long term implications for the trees. This includes the attitude of future flat occupiers and the realities of construction.

25. Some flats in Blocks A, B and C have their main outlook directly into the tree belt along the southern boundary. Leaving aside the regular pruning necessary to

accommodate the proposal, I consider that it is also reasonable to anticipate future requests from these residents for additional pruning, crown lifting and potentially even felling to improve their outlook. I appreciate that the trees are subject to a tree preservation order and located on adjoining land. There would therefore be a control on any such requests. Nonetheless, the relationship between the proposal and the southern tree belt needs to be assessed before planning permission is granted. In my judgement, the flats are so close to the tree canopy that reasonable requests for further pruning and crown lifting would be difficult to resist.

26. I note that there are a number of other trees where within their canopy spread, ground levels are altered or construction of one form or another takes place. Even with the careful construction techniques proposed, a tree is a living organism where such activities increase the risk of harm, which could ultimately result in the need for later removal.

27. The proposed tree protection plan shows the line of protective fencing. I would observe that this line leaves little room for the inevitable storage of materials and plant necessary to build a four storey building of this size. It would require very careful site planning and construction programming, which, again in my experience, is difficult to guarantee and impractical to enforce through planning conditions.

28. In my judgement the proposed loss of tree number 4409 is visually unfortunate and unnecessary and therefore unacceptable and results in a breach of Policy Env 12. In addition, I consider that there is a risk that further tree trimming and removals may ultimately prove necessary if the proposal was constructed. I consider that the likely overall and long term impact on trees has been understated by the appellant.

#### *Density of development*

29. Policy Hou 4 seeks an appropriate density of development having regard to a number of factors including the characteristics of the surrounding area. It is important to recognise that the density of development is simply a mathematical ratio, of itself, it indicates little about the overall acceptability of a design.

30. It is not surprising that the proposal for flatted development at 84 units/ha has a higher density than the conventional housing to the north. However, the proposal also has a significantly higher density than the two adjoining blocks of flats at 1 and 2 Pentland Drive (56 units/ha and 37 units/ha respectively).

31. Both the appellant and author of the report of handling refer to 10 Pentland Drive as an example of development with a higher density than the appeal proposal. I do not consider isolating the site of 10 Pentland Drive to be a helpful comparator. 10 Pentland Drive is obviously part of a wider cul-de-sac development. The density of the overall development would be reduced if this was taken into account. In any event, 10 Pentland Drive has a high site coverage and located on a site with completely different characteristics and features compared to the appeal site. I certainly do not consider that the individual density of 10 Pentland Drive sets any form of a benchmark of acceptability.

32. Above I have identified what I consider to be a number of unacceptable design impacts of the proposal upon the wider area, neighbouring properties and trees. All these

impacts are an inevitable consequence of attempting to accommodate 37 flats. I therefore agree with the City of Edinburgh Council that the proposal is contrary to Policy Hou 4.

### *Parking*

33. Policies Tra 2, Tra 3 and Tra 4 relate to the provision and design of car and bicycle parking. A number of local residents have criticised the adequacy of the total provision of parking and various aspects of the car parking layout.

34. I think it is reasonable to assume that the City of Edinburgh Council, as planning authority, has considerable experience of car and bicycle parking provision in flatted developments. The published guidelines would have been developed in the light of this experience. I have no evidence before me to reasonably conclude that the guidelines are inherently deficient or flawed. I note that the council's transportation and planning officials do not share the concerns of some of the local residents.

35. Above I have identified various concerns about the overall design, including the impact of the car parking layout on the amenity of 76 and 78 Swan Spring Avenue. However, I cannot conclude that the proposal has not addressed the particular requirements of Policies Tra 2, Tra 3 and Tra 4.

### *Other policy matters*

36. I have also been referred to Policy Env 16 (Species protection), Policy Env 21 (Flood protection), Policy Hou 2 (Housing mix), Policy Hou 6 (Affordable housing), Policy Des 6 (Sustainable buildings) and Policy Des 7 (Layout design).

37. Some local residents have questioned the submitted wildlife assessment. However, I have no evidence before me that indicates that its overall conclusions are invalid. I note that the council do not challenge the conclusions of the assessment. In any event, even if protected species were to be present, the issue could be addressed by an appropriately worded planning condition and the requirements of the separate licensing regime. I am aware of no suggestion that the proposal would have any unacceptable impacts regarding flooding or water drainage.

38. The proposal includes a mix of flat types and has met the council's affordable housing requirements. The council is not arguing that the proposal would be unable to meet the general requirements of Policies Des 6 and Des 7.

### *Conclusions*

39. I find no objection to the principle of an appropriate re-development of the site to meet the housing needs of Edinburgh. There are a number of policy requirements that have been met. However, I have found that the proposal would be an unduly dominant and prominent building within the local context, have an unacceptable impact upon the amenities of the rear garden area of 76 and 78 Swan Spring Avenue and result in the removal of an important tree. I also agreed with the council that the proposal would be contrary to Policy Hou 4. I conclude that the proposal would not meet the objectives of the

development plan to ensure that new development is well designed. Overall, I find that the proposal would be contrary to the provisions of the development plan.

## **Material considerations**

### *Retaining the existing building*

40. Many of the representations I have received have objected to the loss of the existing building. I accept that the building has some architectural and historic value.

41. However, Historic Environment Scotland has assessed the building and has declined to include the building in the statutory list. The building is also not within a conservation area. This does not mean the building has no merit. The difficulty is that as it currently stands, if the landowner is content for the building to be demolished there is no mechanism to prevent this from occurring. In planning law and procedural terms, the demolition of the building would be known as the 'default position'. It has long been established that the 'default position' is a significant material consideration.

42. The retention of the building is therefore solely a matter for The City of Edinburgh Council as landowner. In terms of the proposal before me, the council's reasons for refusal do not refer to the demolition of the existing building. I therefore find that the refusal of planning permission on the basis that the existing building should be retained would be unsound as such a decision could be negated by the actions of the landowner immediately after issuing my decision.

### *Traffic generation and safety*

43. Many representations also argued that the proposal would result in excessive traffic generation that would increase traffic congestion and cause related road safety concerns.

44. On my site visit I observed on street parking which obviously reduces the capacity of a road. I have no reason to doubt that at certain times, for example, when parents drop off or pick up school children, there is an increase in on street parking and therefore localised congestion. The same would occur if large service vehicles needed to use the surrounding streets. However, it is important to recognise that a degree of traffic congestion is an inevitable consequence of modern urban living.

45. For me to refuse planning permission on the basis of excessive traffic generation, I would have to have evidence demonstrating that the traffic generated by the proposal, over and above the traffic already using the network, would be unable to be accommodated and therefore cause significant delays, compared to what could be reasonably expected in any urban area. I have been presented with no such evidence.

46. The appellant has prepared a transport assessment. This assessment utilises a well respected traffic generation database. At peak times it is predicted that the proposal would generate 20 two way car trips. In my experience, this is well below the threshold where unacceptable traffic capacity issues would arise.

47. The provision of any new road junction increases the risks of conflicting traffic movements. We manage this risk by applying design guidance regarding junction spacing, visibility splays and widths etc. There are very many existing and new road junctions that do not meet accepted guidelines in every respect. Ultimately a judgement must be made as to whether any individual proposal would create unacceptable risks. I note that traffic speeds would be low for any vehicles using the new junction. The design of the junction was altered to satisfy the council's transportation officials. Overall, I see no sound basis for the refusal of planning permission regarding traffic generation or safety matters.

### *Scottish Planning Policy*

48. An important planning principle contained within Scottish Planning Policy is the importance of creating high quality places and taking a design lead approach. Above, I have identified what I consider to be a number of deficiencies in the design of the proposal. I am aware of no reason why I would reach a different conclusion applying the principles contained in Scottish Planning Policy. Indeed, I note that in paragraph 56, planning permission may be refused solely on design grounds.

49. I do not consider that a proposal which has design deficiencies can be considered as development that contributes to sustainable development. Therefore, I do not consider that the policy presumption in favour of development applies to the proposal.

### *Other matters*

50. In the letters of representation against the proposal, a wide range of other arguments have been raised, including creation of a precedent, overshadowing, blocking of views, adequacy of the tendering process, adequacy of the report of handling, adequacy of the submitted information, available school provision and disturbance during construction. I consider that where these points are relevant to my decision they are secondary matters to the determining issues that I have identified above. They do not provide any reasons why the provisions of the development plan should be set aside.

51. There were also representations made in support of the proposal. I accept that the proposal would contribute to meeting housing needs. However, I have no reason to suppose that an alternative acceptable development would be unable to contribute to housing need. I do not consider that the creation of 37 flats outweighs my concerns over the design set out above.

### **Overall conclusion**

52. For the reasons set out above, I find that the proposal would not comply with the objectives of the relevant design policies of the development plan. In my judgement, the proposal would appear unduly dominant and prominent within its local context, would have an unacceptable impact upon the amenities of immediately adjoining properties and result in the loss of an important tree. I consider that the proposal would have an excessive density and find that the concerns of the council and many local residents that the proposal amounts to over-development to be well founded. I do not consider that there are any material considerations that should outweigh the provisions of the development plan in this



instance. I have considered all the other matters raised in this appeal, but there are none which would lead me to alter my conclusions.

*Dan Jackman*

Principal Reporter