



Decision by Philip Barton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2250
- Site address: vacant site to south and west of the junction at Hillhouse Road & Strachan Road, Edinburgh, EH4 7AB
- Appeal by Northcare Scotland Ltd against the failure by The City of Edinburgh Council to give notice, within the prescribed period, of a decision on application for planning permission in principle 18/03216/PPP dated 27 August 2018
- The development proposed: a 4 storey residential care home for the elderly, with associated access, car parking and landscaping
- Date of site visit by Reporter: 20 November 2018

Date of appeal decision: 22 February 2019

Decision

I dismiss the appeal and refuse planning permission in principle.

Preliminary Matter

1. The council has given no indication as to the decision it would have made had jurisdiction not been transferred to the Scottish Ministers. However, applications for planning permission in principle references 15/03940/PPP and 16/02437/PPP, for very similar proposals on the same site, were refused on 8 March 2016 and 17 March 2017 respectively. I note that 16/02437/PPP was assessed against the same policy context that applies to the proposal before me. Furthermore, the proposal before me seeks to address the reasons for refusal of previous applications. In my determination of this appeal I have had regard to the circumstances surrounding the refusal of 16/02437/PPP.

Reasoning

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

Relevant Development Plan Policies

3. The development plan for the area comprises the South East Scotland Strategic Development Plan, approved 27 June 2013 (SESplan), and the Edinburgh Local Development Plan, adopted 24 November 2016 (LDP).



4. Having regard to SESplan, paragraph 10 states that the number of people aged between 65 and 84 years is increasing and that the number of smaller households is growing. Policies 5, 6 and 7 deal with the provision of housing but there is no requirement for local development plans to make dedicated provision for residential care homes. SESplan sets out the strategic planning framework for the whole of south east Scotland and is not intended for use in the determination of individual development proposals. It is now more than five years old and its policies are therefore out-of-date. I have dealt with the implications for this appeal of SESplan being out-of-date as a material consideration.
5. Having regard to LDP policies, the appeal site is allocated on the proposals map as open space, with the extreme eastern end of the plot being within the Blackhall Local Centre. Application reference 16/02437/PPP was refused on the grounds that it failed to accord with policies Env 12 Trees; Env 16 Species Protection and Env 18 Open Space Protection. The appellant accepts that these policies are relevant to this appeal. It also considers the following policies to be relevant in this case: Des 1 Design Quality and Context; Des 4 Development Design – Impact on Setting; Des 5 Development Design – Amenity; Des 7 Layout Design; Env 22 Pollution and Air, Water and Soil Quality; Hou 7 Inappropriate Uses in Residential Areas; Tra 2 Private Car Parking, and Tra 3 Private Cycle Parking.
6. On 20 December 2018 I made a screening direction in which I explained why the proposal should not, in my opinion, be treated as ‘EIA development’. However, the proposed development is likely to have local effects that need to be considered and so I agree that Policy Env 22 is relevant to this appeal. All other policies referred to by the appellant are relevant to new residential proposals. Having taken into account the scope of concerns raised by neighbours in relation to road and pedestrian safety, I consider that Policies Tra 2 and Tra 3 are not directly relevant to the main issues in this appeal.
7. Consequently, in my view the most relevant development plan policies to this appeal are LDP policies Des 1; Des 4; Des 5; Des 7; Env 12; Env 16; Env 18; Env 22, and Hou 7. Also relevant are LDP objectives, with particular reference to the need to: 1) ensure that the city develops in an integrated and sustainable manner; 2) protect and enhance the nature conservation and biodiversity interest of the city; 3) meet the requirement for additional housing whilst protecting environmental quality in established housing areas, and 4) promote more sustainable, better balanced communities.

Material Considerations

8. SESplan is out-of-date. An examination of the second SESplan (SESplan2) was concluded on 20 July 2018. Increasing weight may be attributed to emerging strategic development plan policies as they progress towards approval. Edinburgh Design Guidance (EDG), which was adopted in October 2017 and amended in November 2018, has the status of non-statutory guidance. SESplan Housing Need and Demand Assessment 2 Final Report (HNDA2) was published in March 2015. Scottish Planning Policy (SPP) was published by the Scottish Government in June 2014. Most of the site is subject to woodland tree preservation order (TPO) 130 Hillhouse Road (originally TPO No. 2 1991 (Hillhouse Road)). The Native Woodland Survey of Scotland (NWSS) website is managed by the Scottish Environment Protection Agency.

9. City Housing Strategy 2018 (CHS) sets out the strategy, priorities and plans for the delivery of housing and related services. Draft Advice on Net Economic Benefit and Planning (DANEB) was published by the Scottish Government in March 2016 for consultation. Reshaping Care for Older People – ‘Getting On’ was published by the Scottish Government in September 2013. It refreshes Reshaping Care for Older People – A Programme for Change 2011-2021 (RCOP), published by the Ministerial Strategic Group for Health and Wellbeing in 2010, which sits above other strategies for particular groups or issues within health and social care policy. Edinburgh’s Joint Commissioning Plan for Older People 2012-22, ‘Live Well in Later Life’ (LWLL) was published in 2013 by Transform Edinburgh following a process of public consultation. It sets out a high-level vision for the delivery of health and social care services. Planning Advice Note 65: Planning and Open Space (PAN65) was published by the Scottish Government in May 2008.

Main Issues

10. Having regard to the provisions of the development plan, the main issues in this appeal are the effect of the proposal upon: 1) the provision of specialist housing; 2) biodiversity; 3) open space; 4) the character and appearance of the area; 5) the living conditions of neighbours, with particular reference to privacy and outlook, and 6) road and pedestrian safety.

Specialist Housing

11. The most up-to-date assessment of housing need in Edinburgh is summarised on page 51 of HNDA2, which covers the period 2012-2037. It projects that the number of single adult households will increase by 56%; that households headed by people aged between 60 and 74 years will increase by 41%, and that those headed by a person aged 75 years or older will increase by 71%. The appellant estimates that there is currently a statistical undersupply of 262 care homes beds and that this is likely to rise to 381 by 2030. There is no doubt that the housing needs of older people must be provided for. This provision also needs to take account of the likely increase in the number of single person households and the expectation that a growing proportion of these households will have health and social care needs that should be met.

12. SESplan2 paragraph 5.6 states: *“SESplan member authorities will ensure that Local Housing Strategies and Local Development Plans enable the types of homes that will address the needs of a growing, ageing population and the growth in the number of smaller households”*. On page 291 of the SESplan2 examination report, the Reporter for Issue 10 – Affordable and Specialist Housing stated: *“I do not consider it necessary to set out specific figures for such need and demand, as that is best addressed in local development plans”*. So, it is the LDP that must be relied upon to quantify the need for specialist housing and to provide a policy context to manage its delivery. However, there are no current LDP policies pertaining to the delivery of specialist housing.

13. LWLL pages 25-26 offers a detailed analysis of the housing needs of older people. It states: *“...two-thirds of older people with...dementia currently live in care homes and the remainder live in their own homes... A survey of needs and dependency of older people in Edinburgh care homes carried out by the NHS in 2011 found that the proportion of residents with a high 'Mental Health' score...had risen from 9% in 2000 to 36% in 2011...”*

Alongside this, it is estimated that 60% of patients over the age of 65 in general hospital beds have, or will develop, a mental health problem, including dementia... Alzheimer's Society's 'Counting the Cost' report considers the cost of people with dementia being inappropriately placed in hospital. Evidence shows that the longer people with dementia are in hospital, the worse the effect on the symptoms of dementia... The report makes recommendations to reduce the number of people with dementia being cared for in hospital in order to create a more cost-effective system that provides good quality care to people with dementia..."

14. CHS page 18 states: *"As the population is growing and people are living longer in the community, it is envisaged that more support services would be required to help people access suitable housing and live independently in their own homes"*. This reflects the priorities outlined in LWLL and RCOP, which are to *"continue to focus on services which help people to stay in their own homes where appropriate"* and to ensure that *"older people are supported to enjoy full and positive lives in their own homes or in a homely setting"*. Part 2.2 (page 11) of the RCOP refresh report indicates *"that there will be a move away from an over-reliance on traditional 'institutional' care towards care and support in the home or a community setting that is designed around the needs of the individual"*. It goes on to say that this will require a shift in the balance of resources, such that more money is spent on *"the measures that can prevent someone needing to go into a hospital or care home"*.

15. As far as meeting existing demand is concerned, CHS page 19 states: *"Housing partners continue to strengthen joint working with health and social care partners to ensure new homes can meet the needs of priority groups and that support services are integrated with housing. Through the Housing Contribution Statement, which forms part of the Edinburgh Health and Social Care Partnership's Strategic Plan for 2016 – 2019, housing partners have committed to invest up to £300 million of the housing investment programme to build around 3,000 affordable homes, integrated with health and social care services, to meet the needs of older people and people with complex physical and health needs"*. I have been presented with no evidence to indicate that the proposal before me has come forward expressly as a result of this initiative.

16. Residential care homes undoubtedly contribute to meeting the need for specialist housing, especially for people living with dementia, and will continue to do so in the future. However, the material considerations that I have been pointed to indicate that public policy now places more reliance upon preventative services and ensuring that people are enabled to live independently in their own homes for as long as possible. Whereas there clearly is a need to provide more specialist housing of all types, it is beyond the scope of a single appeal to determine what the correct balance should be between new accessible housing, care home beds and the adaptation of existing homes.

17. On the basis of the evidence presented to me in this case, I am satisfied that the proposal would make a small but valuable contribution to the supply of specialist housing in Edinburgh both directly and indirectly, by enabling 'downsizing'. Although this matter weighs in favour of allowing the appeal, the amount of positive weight it attracts is limited by the policy position I have set out above.

Biodiversity

18. I have seen no substantive evidence to indicate that protected species are present on the site, nor that it provides supporting habitat for any such species. The proposal would, therefore, accord with LDP Policy Env 16. However, the biodiversity value of a site is not restricted to its ability to support protected species.

19. The submitted tree survey report assesses the condition and life expectancy of each tree on the site. Category A trees are very good specimens in good condition, with a life expectancy of more than forty years. Category B trees are in good condition with minor defects and a life expectancy of more than twenty years. Category C trees are in poor condition, with a life expectancy of more than ten years. Category U trees are dead, dying or of very low quality, with a life expectancy below ten years. The position and category of each tree to be felled and each tree to be retained, is shown on drawing number 066-107, revision C, dated 6 November 2017.

20. According to the NWSS website, the site is classified as native lowland mixed deciduous woodland and comprises 60% native species. I note the appellant's comments about whether this site should continue to be included within the survey because it has dwindled in size over the years. However, the main consideration here is not whether this particular group of trees may accurately be described as woodland but the effect of the proposal upon biodiversity, which includes its effect upon trees and the habitats they create. Moreover, section 159 of the Act places a duty upon decision makers to make appropriate provision for the preservation of trees. In this case, the council has fulfilled this duty by making a woodland tree preservation order.

21. The NWSS description is broadly consistent with both the tree survey report and the first schedule of TPO No. 2 1991. Ash, Elm and Oak are key tree species within this type of woodland. According to the tree survey report, three Ash, twenty-three Elm and twenty Oak would need to be felled to enable development. Three of these have been assessed as category A specimens. The loss of healthy specimens of all three species would harm the biodiversity of the site. However, it is particularly important to preserve as many healthy, mature specimens of Elm and Ash as possible because both of these species have been badly affected nationally by disease in recent decades. The proposal would also harmfully degrade an important and dwindling native habitat. I acknowledge that maintaining the trees entails a cost to the landowner, but stewardship is essential to preserving any native woodland and the habitats that they create, which are so important to Scotland's natural heritage and biodiversity. The harm to biodiversity that I have identified in this case weighs heavily against allowing the appeal.

22. LDP Policy Env 12 states that development likely to have a damaging effect upon a TPO tree will not be permitted, unless necessary for good arboricultural reasons. I accept that there are good arboricultural reasons to fell and replace all category U trees but no good arboricultural reason for the felling of any category A, B or C tree has been advanced. Paragraph 2.2.2 of the submitted design and access statement (DAS) excludes category C trees from the total number to be felled but this appears to be justified on aesthetic grounds alone. As to the precise number of trees involved, there are small discrepancies between the tree survey report, DAS and drawing number 066-107. DAS paragraph 2.2.1 states that there are one hundred and thirty-seven trees within the site. DAS paragraph 2.2.2 indicates

that six category A and forty-four category B trees would be felled. According to drawing number 066-107, up to nineteen category C trees would be felled. So, as far as I have been able to discern from the evidence before me, sixty-nine trees would be felled without good arboricultural reason. This equates to about 50% of the existing tree cover. The proposal would not, therefore, accord with LDP Policy Env 12.

23. The tree survey report suggests that the trees to be felled could be replaced by Yew (*Taxus baccata*). However, Yew is not a species typically found within native lowland mixed deciduous woodland. So, this would not help to remediate the harm to dwindling native woodland habitat and threatened tree species that I have identified. Nevertheless, I accept that details of replacement planting (including species mix) could be secured by a condition requiring a landscape management plan to be prepared and implemented.

Open Space

24. The appellant considers that the loss of the site as open space is justified on the basis of LDP Policy Env 18 criterion c). PAN65 paragraph 10 states: *“the term ‘open space’ covers greenspace consisting of any vegetated land...within and on the edges of settlements”*. Although public access is often an important characteristic of open space, PAN65 paragraph 13 advises that: *“all spaces, regardless of ownership and accessibility (i.e. public and private spaces) contribute to the amenity and character of an area and can be taken into account by councils when undertaking their open space audits and strategies”*. This is reflected in the reasoned justification for LDP Policy Env 18, which seeks to protect open spaces that either contribute to the amenity of their surroundings or are capable of providing for the recreational needs of residents and visitors.

25. Scottish Planning Policy relies upon PAN65 and, at paragraph 224, states: *“plans should identify and protect open space identified in the open space strategy as valued and functional or capable of being brought into use to meet local needs”*. It is clear from the comments of neighbours that the wooded area is valued and the positive contribution that it makes towards biodiversity is discussed above. The site would be landscaped and some of its existing biodiversity value would be retained. It would remain in private ownership and would help to serve the recreational needs of future residents, if not the general public. However, as a result of its size, the proposed building would substantially diminish the positive contribution that the existing wooded area makes to the quality and character of the local environment. Neither have any off-site compensatory measures been suggested and the proposal is not one for a community purpose. Consequently, it would not accord with LDP Policy Env 18.

Character and Appearance

26. The locality is predominantly residential and has a settled character. It is typified by a mix of detached bungalows and two storey houses sitting on generously sized plots with mature gardens. Most dwellings are of a design and appearance typical of those constructed between about 1930 and 1950. Later infilling, appearing to date from between about 1975 and 1985 follows the same general pattern of development but at a higher density. Distinctive design details include whitewashed cement render walls and prominent roof planes covered with either grey slate or red tiles, many of which are pierced by eaves windows or dormers. Property boundaries are typically defined by mature hedges and

broadleaf deciduous trees. None of the buildings that I saw during my site inspection are occupied over more than three levels above the ground.

27. DAS paragraph 3.1 states: *“the “design” is by no means fixed or developed to any extent”*. Whereas the precise details of the building’s external appearance, materials of construction and internal layout could change at the matters specified in conditions stage, its physical parameters have been established by the description of development, which is for a 4-storey residential building. Moreover, the appellant relies upon the 4-storey design to reduce the number of trees that would need to be felled and to increase the total amount of floorspace by 375.8 square metres in comparison with previous proposals.

28. Precise details of the design, external materials of construction and external layout could be secured at the matters specified in conditions stage. Consequently, the proposal need not conflict with LDP Policies Des 1 and Des 7.

29. The proposed building would be substantially larger, in terms of both height and general bulk, than any other in the locality. It would be partly screened from view by the retained mature trees (when they are in leaf) and the rising ground to the south would make it appear relatively less prominent from viewpoints in Strachan Road and March Road. Nevertheless, as a result of its size and siting, I find that it would appear visually discordant and harmfully prominent in its context, which is a high-quality built environment with a settled townscape character. Consequently, it would not accord with LDP Policy Des 4, which requires proposals to demonstrate that they would have a positive impact upon their surroundings, including the character of the wider townscape and landscape, having regard to height, form, scale and proportions (amongst other criteria).

30. The proposal would not comply with the advice on EDG page 42, which states that *“new buildings that are clearly higher than their neighbours should be avoided”*.

Living Conditions

31. The rear elevations of the proposed building and bungalows in March Road would be separated by about 18 metres; there is intervening vegetation, and the land rises to the south. However, the sheer size of the proposed building means that it would nevertheless appear harmfully obtrusive in outlook from the rear windows and gardens of bungalows in March Road. The indicative proposals before me suggest that there could be publicly accessible first and second floor day room balconies and a third floor café terrace, which might allow harmful overlooking of the rear gardens of bungalows in March Road, or at least create the impression of being overlooked. However, the acceptability of such elements would be a matter for consideration at the matters specified in conditions stage, so I have not included any such potential effects in my assessment.

32. As a result of its size, siting and orientation in relation to existing dwellings in March Road, I find that the proposed building would fail to accord with LDP Policies Des 5 and Hou 7, which require proposals not to have a materially detrimental effect upon the living conditions of nearby residents in relation to, amongst other criteria, immediate outlook.

33. The proposal would not comply with the advice on EDG page 78, which explains that *“the rearward side of development often provides a better opportunity for privacy and*

outlook than the streetward side...” and that *“there may be higher expectations for separation in suburban areas...”*.

Road and Pedestrian Safety

34. There is a 40 miles per hour maximum speed limit on Hillhouse Road in the vicinity of the proposed new vehicular access. Drawing number 066-GA-200, revision D, dated 22 September 2017 indicates that vehicles would enter and leave the site by making a left turn, such that the risk of vehicle conflict caused by crossing the carriageway on this very heavily trafficked road would be minimised. During my site inspection, I noted significant gaps in traffic caused by the operation of the traffic lights at the junction of Hillhouse Road with Strachan Road and Telford Road, which allow enough time for vehicles to manoeuvre onto Hillhouse Road and to accelerate away safely. Moreover, the road authority has raised no objection, subject to a number of conditions.

35. No dedicated pedestrian route linking the public footway on Hillhouse Road with the building is proposed. Given that a proportion of future occupants would be vulnerable road users (older people and/or wheelchair-users in particular), it is vital that they should be able to move between the public realm and the proposed building safely. However, this is a matter that could reasonably be addressed at the matters specified in conditions stage. Consequently, I find that the proposal need not fail to accord with LDP Policy Des 7, which expects proposals to adopt a comprehensive and integrated approach to layout, which promotes safe and convenient access, having regard especially to the needs of people with limited mobility.

Other Matters: Economic Benefit

36. The appellant has calculated that the gross value added during the construction and operation of the proposed development would be £2,125,860. DANEB paragraph 4 explains that *“new residential development helps to meet housing need and contributes towards meeting housing supply targets, however it will not usually be necessary to also make an argument regarding the economic benefit of a proposed housing development”*. I have taken into account the contribution that the proposal would make to meeting the need for specialist housing and accept that there would be a nett economic benefit. I also note the Reporter’s reasoning in PPA-230-2161, which is a broadly similar case. This is a matter that weighs in favour of allowing the appeal.

Other Matters: Sustainable Development

37. SPP paragraph 33 states: *“where relevant policies in a development plan are out-of-date...then the presumption in favour of development that contributes to sustainable development will be a significant material consideration”*. SESplan is out-of-date but I have found none of its policies to be relevant to the proposal before me. Conversely, all relevant LDP policies are up-to-date. Consequently, in this case, I cannot treat the presumption as a significant material consideration. Nevertheless, where relevant I have taken into account the ways in which the proposal would comply with the thirteen principles of sustainable development set out in SPP paragraph 29. I have indicated in my reasoning and in the planning balance below where these factors weigh in favour of allowing the appeal.

Other Matters: Air Quality

38. The appeal site is adjacent to Hillhouse Road (A90), which is a principal route into Edinburgh city centre and to the docks. I note the concerns expressed by third parties in relation to recent reports that safe nitrogen dioxide and particle levels have been exceeded in Queensferry Road (also part of the A90). The appellant accepts that these reports are broadly accurate but points out that the monitoring station that recorded these levels is located about 2.5 kilometres away from the appeal site; no objection to the proposal was received from the Council's Environmental Health Officer, and the appeal site is not located within an Air Quality Management Area.

39. Some additional journeys by private car would be generated by staff and visitors but most permanent residents would be unlikely to own and drive a private car. There would also be additional vehicle movements related to deliveries. In my assessment, the likely volume of additional vehicle movements would not significantly worsen air quality in the immediate vicinity of the appeal site. Moreover, the appellant proposes to implement a Green Transport Plan and this is a matter that could reasonably be provided for by condition.

40. The tree survey report indicates that the green environment helps to improve air quality by absorbing volatile organic compounds, although the appellant also points to evidence indicating that vegetation is not a very efficient sink for nitrogen dioxide. The appellant also reasons that thinning out the tree canopy in the manner suggested may improve the contribution that the remaining trees would make to improving air quality. The tree survey report also suggests that the trees to be felled could be replaced by Yew, which is known to be especially effective at reducing air pollution. This could reasonably be achieved by condition.

41. Consequently, the proposal would accord with LDP Policy Env 22, which requires proposals to demonstrate that they would have no significant adverse effect upon, amongst other factors, air quality.

Planning Balance

42. I have found that the proposal would make a positive contribution towards meeting an identified shortfall in care home beds. It would also generate a nett economic benefit. Furthermore, with appropriate conditions it need not harmfully increase the risk of vehicle and vehicle/pedestrian conflict or cause a further deterioration in air quality. It would also make a positive contribution towards meeting the LDP objective that seeks to promote more sustainable, better balanced communities.

43. However, in my assessment, this is outweighed by the harm that the proposal would cause through the loss of valued open space, as well as to biodiversity; the character and appearance of the area, and to the living conditions of neighbours. As a consequence of this harm, the proposal would not help to achieve the LDP objectives that seek to: 1) ensure that the city develops in an integrated and sustainable manner; 2) protect and enhance the nature conservation and biodiversity interest of the city, and 3) meet the requirement for additional housing whilst protecting environmental quality in established housing areas.

44. On the basis of my findings above and when assessed against the thirteen principles of sustainable development set out in SPP paragraph 29, the proposal cannot accurately be described as development that would contribute to sustainable development. In this regard, the most relevant of these principles are those contained within the third, eleventh and thirteenth bullet points. I have also kept close in mind what SPP paragraph 28 says about the aim of the planning system, which is to achieve the right development in the right place, not to allow development at any cost.

45. Consequently, keeping in mind my reasoning in paragraph 37 above, even if SPP paragraph 33 were applicable to the circumstances of this appeal, I would not have concluded any differently when considering the final planning balance. This is because the proposal would not, when all factors are considered, be development that would contribute to sustainable development and because the benefits that it would deliver would be substantially and demonstrably outweighed by the harm that it would cause.

Conclusion

46. I therefore conclude, for the reasons set out above, that the proposed development would not accord overall with the development plan and that there are no considerations of such weight to indicate that the development plan should be set aside.

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

Philip Barton
Reporter