

Report to the Scottish Ministers

**Town and Country Planning (Scotland) Act
1997**

**Planning (Listed Buildings and Conservation
Areas)(Scotland) Act 1997**

October 2021



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Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)(SCOTLAND) ACT 1997

Report by David Buylla, a reporter appointed by the Scottish Ministers

- Case reference: NA-EDB-051
- Site Address: 553–555 Gorgie Road, Edinburgh, EH11 2QX
- Application by Kiltane Developments Limited
- Application for planning permission 20/00619/FUL dated 7 February 2020, called-in by notice dated 13 November 2020
- The development proposed: erection of mixed-use development comprising residential flats, purpose-built student accommodation, associated car parking, cycle parking, landscaping and infrastructure; change of use of existing car showroom to class 1 and class 2 uses
- Proposal considered by written submissions, the consideration of a video recording of the site and surroundings that was submitted by the applicant on 1 February 2021, on which comments from other parties were sought, and three rounds of further written submissions dealing with flood risk and other matters.

Date of this report and recommendation: 14 July 2021



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DPEA case reference: NA-EDB-051

The Scottish Ministers
Edinburgh

Ministers

This application for planning permission was recalled for Ministers' determination under section 46 of the Town and Country Planning (Scotland) Act 1997 on 13 November 2020 because the council had indicated it was minded to grant planning permission, against the advice of the Scottish Environment Protection Agency (SEPA). The recall direction confirmed that, in view of the proposed development's potential conflict with national policy on flooding, the issues raised would benefit from further scrutiny by Ministers.

My assessment of this proposal has involved an assessment of the written evidence (including three rounds of further written submissions) and (due to Covid travel restrictions preventing a site inspection) a video recording of the site and surrounding area that was prepared by the applicant. I am satisfied that this video recording provided an adequate impression of the site and its surroundings; no party has disputed this.

For reasons I explain in my report, my recommendation is to grant planning permission subject to conditions and a planning obligation.

Chapter 1: Background

Site location and description

1.1 The application site is brownfield land, extending to 0.52 hectares and lying on the southern side of the A71 Gorgie Road, adjacent to a footpath that runs along the western bank of the Water of Leith. A five storey building, known as ELS House, faces Gorgie Road. This has car showroom premises at ground floor with student housing above. The proposal involves only the ground floor of this building – the upper floors being unaffected. Behind ELS House are motorcycle dealership and workshop premises, arranged over ground and basement levels within a steel framed building which would be demolished as part of the proposal.

1.2 To the immediate north west of the site, at the junction of Gorgie Road and Stenhouse Mill Wynd, is a four / five storey block of flats. Elsewhere in the locality is a mix of residential and business / light industrial units (in Stenhouse Mill Wynd). There is a small shopping area a short distance to the north east, on Gorgie Road.

1.3 Vehicular access to the site at present is from Gorgie Road and Stenhouse Mill Wynd

The proposal

1.4 It is proposed to convert the ground floor of ELS house into three commercial units and a reception area for the student housing.

1.5 With the exception of the basement, which would be incorporated into the scheme, all of the motorcycle dealership premises would be demolished and replaced with a seven storey (plus basement) block of student accommodation attached to the rear of ELS House and a five storey (plus basement) residential block facing Stenhouse Mill Wynd. Between these would be a central courtyard (sitting above the basement accommodation) providing outdoor amenity space for both blocks.

1.6 Car and cycle parking would occupy the retained basement accommodation along with bin stores for both the residential and student housing blocks. It was originally proposed also to provide an indoor amenity space for the student accommodation, including sitting areas and a gym. However, the applicant has indicated that it would be content for this to be removed from the scheme if necessary for flood risk reasons. I discuss that issue later in this report.

1.7 Outdoor space within the site would be landscaped with turf, groundcover planting and hedging. Access to the basement car and cycle parking area would be via a ramp down from Stenhouse Mill Wynd.

1.8 By letter dated 13 November 2020, Scottish Ministers advised the council that, in view of the proposed development's potential conflict with national policy on flooding, the planning application for this proposal was required to be referred to them for determination under section 46 of the Town and Country Planning (Scotland) Act 1997.

Chapter 2: Consultation and Representations

Consultation responses

1.9 **The Scottish Environmental Protection Agency's (SEPA's)** initial response to this application on 22 June 2020 confirmed that it was unable to advise in respect of the proposal under the terms of its Planning Information Note 4: *SEPA position on development protected by a Flood Protection Scheme (PIN4)* until the conclusion of an on-going project to analyse the standard of protection that is provided by the Water of Leith Flood Protection Scheme (WoLFPS).

1.10 On 9 July 2020, having been asked by the council to reach a conclusion either in support of, or in opposition to, the proposal, SEPA confirmed that its position should be regarded as an objection on grounds of flood risk due to general uncertainties in relation to the hydrology of the catchment and design flows.

1.11 In the same response, SEPA advised that a consultant was undertaking a hydrology and hydraulic modelling flood study of the Water of Leith - the first detailed study through the city of Edinburgh since the completion of Phases 1 and 2 of the WoLFPS. From this, SEPA hopes to have a better understanding of the hydrology of the catchment and the standard of protection provided by the built flood protection scheme, which can differ from its original design specification. However, as the application site is upstream of the WoLFPS it is not protected by the scheme and SEPA's concerns over flood risk do not relate to the absence of this anticipated report.

1.12 I asked SEPA to provide more detail on its flood risk objection and to respond to submissions from the applicant and council on the relative vulnerability of the existing and proposed uses. Its ability to engage with the proposal has been significantly hampered by having no access to its electronic files following a cyber-attack last year. Essentially it had to respond to the proposal afresh. In addition, its policy on certain forms of flood plain development is about to be revised and it has reconsidered the proposal on the basis of this revised policy. As a result, it has now confirmed that it has no objection to the proposals.

1.13 I discuss SEPA's responses in Chapter 4 of this report.

1.14 **The Water of Leith Conservation Trust** strongly objects to the proposal on flood risk grounds. It notes that the applicant accepts that the basement of the proposed building would flood in a 1 in 200 year event. It does not consider that development should be permitted on land that is known to be at risk of flooding. It is also dissatisfied with the height of the building, being much taller than the structure it would replace. It fears the building would loom over the river and walkway, reducing its natural feel, and could cause light pollution to the detriment of wildlife. It refers to council guidance that specifies a 15 metre set-back from the river.

1.15 **The council's flood prevention team** initially asked the applicant to demonstrate that the proposals would not increase flood risk to other properties and that by allowing the basement to flood, no flood plain storage would be lost. It also requested that the flood risk assessment and surface water management proposals be checked by an independent consultant. Upon receipt of an independent check, the team confirmed it was satisfied with the proposals.

1.16 **The council's housing management and development team** notes that the eight proposed affordable two-bedroom flats would exceed the 25% requirement in LDP Policy Hou 6 and are acceptable. These should be secured by a planning obligation and the council's preferred tenure would be social rented.

1.17 **The roads authority** has no objections to the proposal subject to a developer contribution of £2000 towards the cost of an order restricting waiting and loading in Stenhouse Mill Wynd, the provision of continuous footways across the site frontages and a travel plan aimed at encouraging more sustainable modes of travel by future residents.

1.18 **The council's archaeologist** confirms that the site lies directly opposite the category A listed Stenhouse Mills and appears to have been associated with that building in the past. As such, it should be regarded as having archaeological importance, both in terms of the late-medieval and post-medieval development of Stenhouse Mills and also Edinburgh's rural industrial heritage. The site has already been significantly disturbed by existing buildings. However, outside the area of the existing basement, archaeological remains may survive. Accordingly, a condition should be attached to any permission requiring a pre-development archaeological investigation.

1.19 **Scottish Water** has no objections to the proposal.

1.20 **The council's waste and cleansing services team** has no objections.

1.21 **The council's environmental protection team** has no objections from the noise perspective, subject to conditions securing appropriate construction details. As the site lies within an air quality management area (AQMA), significant mitigation will need to be incorporated within the scheme to reduce emissions. In this regard, it welcomes the proposed provision of electric vehicle charging points within the parking area, the proposed cycle parking and the use of an electric heating system.

Representations

1.22 An objection has been received on behalf of the owner of adjacent land to the south. This raises concern that the proposal would sterilise the development potential of that adjacent land, contrary to the aims of LDP Policy Des 2. This is due to the proximity of proposed buildings to the boundary and the inclusion of windows in the development that would overlook the adjacent site.

Chapter 3: Policy

1.24 The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and the Edinburgh Local Development Plan 2016 (the LDP). The LDP is accompanied by a number of guidance documents including the non-statutory Edinburgh Design Guidance 2017, which has relevance to this proposal.

1.25 The following policies are of particular relevance to this proposal.

1.26 Policy Des 1 Design Quality and Context expects new development to create or contribute towards a sense of place. Design should be based on an overall design concept that draws upon positive characteristics of the surrounding area.

1.27 Policy Des 2 Co-ordinated Development expects development not to compromise the effective development of adjacent land or the comprehensive development and regeneration of a wider area as provided for in a master plan, strategy or development brief approved by the Council.

1.28 Policy Des 3 Development Design - Incorporating and Enhancing Existing and Potential Features expects that existing characteristics and features worthy of retention on the site and in the surrounding area, have been identified, incorporated and enhanced through its design

1.29 Policy Des 4 Impact on Setting requires development to have a positive impact on its surroundings, having regard to its existing characteristics. The accompanying text confirms that, where surrounding development is fragmented or of poor quality, proposals should seek to repair the urban fabric by creating a sense of place.

1.30 Policy Des 5 Development Design – Amenity is concerned with protecting the amenity of existing residents and with ensuring adequate amenity standards for those who would live in a proposed development. Issues to be addressed include noise, daylight, sunlight, privacy and immediate outlook. Proposals are expected to be adaptable to different occupier's needs and to include facilities such as cycle storage and recycling points.

1.31 Policy Des 6 Sustainable Buildings expects new development to incorporate measures that will improve the proposed building's sustainability in terms of energy generation, water conservation, surface water run-off management, sustainable building materials and the encouragement of sustainable travel for future users.

1.32 Policy Des 10 Waterside Development requires development to present an attractive waterside frontage, to maintain or provide public access, maintain or enhance the water environment including its nature conservation value and, where appropriate, improve recreational use of the water.

1.33 Policy Des 11 Tall Buildings – Skyline and Key Views only permits development that would rise above the prevailing skyline where it would create a justified landmark, where the scale of the proposal is appropriate to its context and where there would be no interference with important views of important buildings or features.

1.34 Policy Env 3 Listed Buildings – Setting confirms that development within the curtilage or affecting the setting of a listed building should not be detrimental to the architectural character, appearance or historic interest of the building, or to its setting.

1.35 Policy Env 8 Protection of Important Remains, among other things, presumes against proposals that would damage or destroy non-designated archaeological remains which the council considers should be preserved in situ.

1.36 Policy Env 9 Development of Sites of Archaeological Significance supports development on sites of known or suspected archaeological significance where it can be concluded that either: no significant archaeological features are likely to be affected by the development; or any significant archaeological features will be preserved in situ and, if necessary, in an appropriate setting with provision for public access and interpretation; or the benefits of allowing the proposed development outweigh the importance of preserving the remains in situ.

1.37 Policy Env 12 Trees does not support development likely to have a damaging impact on a tree protected by a Tree Preservation Order or on any other tree or woodland worthy of retention unless necessary for good arboricultural reasons. Where such permission is granted, replacement planting of appropriate species and numbers will be required to offset the loss to amenity.

1.38 Policy Env 15 Sites of local importance does not support development likely to have an adverse impact on the flora, fauna, landscape or geological features of a Local Nature Reserve or a Local Nature Conservation Site unless the benefits of the proposal outweigh the site's nature conservation interest and adequate mitigation is provided.

1.39 Policy Env 16 Species protection presumes against proposals that would harm species protected by European or UK law unless justified in terms that reflect the relevant legislation.

1.40 Policy Env 20 Open space in new development confirms that the council will negotiate the provision of new publicly accessible and useable open space in new development when appropriate and justified by the scale of development proposed and the needs it will give rise to. In particular, the Council will seek the provision of extensions and/or improvements to the green network.

1.41 Policy Env 21 Flood protection confirms that permission will not be granted for proposals that would: increase flood risk or be at risk of flooding itself; impede the flow of flood water or deprive a river system of flood water storage within the areas shown on the Proposals Map as areas of importance for flood management; or be prejudicial to existing or planned flood defence systems.

1.42 Policy Emp 9 Employment Sites and Premises permits the redevelopment of such sites in the urban area for uses other than business, industry or storage provided that any non-employment uses will not prejudice or inhibit the activities of any nearby employment use, the proposal will contribute to the comprehensive regeneration and improvement of the wider area and, if the site area exceeds one hectare, the proposal includes floorspace designed to provide for a range of business users.

1.43 National planning policy is set out in the third National Planning Framework (NPF 3) and Scottish Planning Policy (SPP), which was revised in December 2020.

1.44 SEPA has published policy and guidance that is of potential relevance to this proposal including Planning Information Note 4: SEPA position on development protected by a Flood Protection Scheme (PIN4) and SEPA Planning Background Paper: Flood Risk

(2018), which is about to be revised to reflect an updated position on “stilted developments” like this proposal.

Chapter 4: The Main Issues

1.45 Having regard to the nature of the proposal and the application site and to the submissions by the parties, I consider the main issues for Ministers' consideration are:

- flooding;
- the effect on heritage assets; and
- the effect on the development potential of adjacent land

1.46 I consider each of these issues in turn below, before reporting on other relevant matters.

Flooding

1.47 Scottish Planning Policy (SPP) sets out policy principles for managing flood risk. Of direct relevance to this application are the requirement of the planning system to adopt a precautionary approach to flood risk from all sources, taking account of the predicted effects of climate change and the promotion of flood avoidance. This is to be achieved by safeguarding flood storage and conveyancing capacity and by locating development away from functional flood plains and medium to high risk areas (where the annual probability of coastal or watercourse flooding is greater than 0.5% (1 in 200 years)).

1.48 SPP expects the planning system to prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.

1.49 Local development plans are expected to use a flood risk framework to guide development. This should be based upon three categories of risk from coastal or watercourse flooding: little or no risk; low to medium risk; and medium to high risk.

1.50 For areas that are identified as medium to high risk of flooding, such as the appeal site, it may be appropriate for plans to allocate residential and commercial uses, as are proposed here, within built up areas that are protected by flood protection measures to the appropriate standard, where such measures are under construction, or where they are a planned measure in a current flood risk management plan. The appeal site is not protected by any flood protection measures – the WoLFPS being downstream of the site. SEPA has confirmed that no measures that would protect the site are currently proposed.

1.51 The issue to address here is not whether to allocate this site for development (in which process, the merits of a number of alternative sites are likely to be compared) but is to assess the merits of developing this particular site against the development plan and any other material considerations. SPP confirms that it is not possible to plan for development solely according to the calculated probability of flooding and that a range of factors should be taken into account during the development management process. These are as follows:

- the characteristics of the site;
- the design and use of the proposed development;
- the size of the area likely to flood;
- depth of flood water, likely flow rate and path, and rate of rise and duration;
- the vulnerability and risk of wave action for coastal sites;

- committed and existing flood protection methods: extent, standard and maintenance regime;
- the effects of climate change, including an allowance for freeboard;
- surface water run-off from adjoining land;
- culverted watercourses, drains and field drainage;
- cumulative effects, especially the loss of storage capacity;
- cross-boundary effects and the need for consultation with adjacent authorities;
- effects of flood on access including by emergency services; and
- effects of flood on proposed open spaces including gardens.

1.52 SEPA's Planning Information Note 4 confirms that, even in locations that are protected by a flood protection scheme, SPP's policy principle of directing development away from functional flood plains and areas of medium to high flood risk should be followed. This is because, while flood protection schemes can reduce flood risk, they cannot eliminate it entirely. In addition, the primary purpose of such schemes is to protect existing development from flood risk rather than to facilitate new development.

1.53 LDP Policy Env 21 confirms that planning permission will not be granted for development that would: increase a flood risk or be at risk of flooding itself; impede the flow of flood water or deprive a river system of flood water storage within the areas shown on the Proposals Map as areas of importance for flood management; or be prejudicial to existing or planned flood defence systems.

1.54 The LDP identifies unbuilt areas of land which fulfil an important flood function, and which should be allowed to flood in order to protect other, built-up, areas from floodwater. These are shown on the Proposals Map as areas of importance for flood management. The application site is not covered by this designation.

1.55 The applicant submitted a flood risk assessment¹ (FRA) with the proposal, which was checked and signed off by an independent consultant, in accordance with the requirements of the council's flood prevention team.

1.56 The FRA considered the potential for the site to flood from several sources: the Water of Leith; Scottish Water sewer systems; surface water drainage; and groundwater. It noted that SEPA's flood maps show the site located close to the medium risk fluvial floodplain of the Water of Leith. As such maps are indicative rather than definitive, a detailed study of the risk of flooding was undertaken using a range of sources including a topographical survey of the site and a mathematical model of the Water of Leith. The FRA followed the advice in 'Technical flood risk guidance for stakeholders', published by SEPA in May 2019.

1.57 The FRA identified the site as being at risk of fluvial flooding from the Water of Leith and categorised the proposed uses of the site as highly vulnerable.

1.58 Upstream of the site, the Water of Leith flows through a number of reservoirs. This has the potential to attenuate water level rises during periods of high rainfall. However, the FRA did not make any assumption of attenuation from this source in order to provide a conservative flood risk model.

¹ [Flood risk assessment](#)

1.59 Also in the interests of following a conservative approach, the FRA adopted a 40% uplift in water flow in the Water of Leith to account for climate change. This is in accordance with the council's guidance and is 5% above SEPA's current requirement.

1.60 Hydraulic modelling of the Water of Leith (which used data provided by the council from the WoLFPS) was calibrated by comparing flooding predicted by the model with historical records of actual flood events. This information was provided by SEPA.

1.61 The FRA modelled the likely level of flooding in a 1 in 200 year (0.5% annual probability) rainfall event, both without and with an allowance for climate change. Even without allowing for increased water flow due to climate change, the basement area of the proposed development was predicted to flood to a depth of 2.0 metres. Accounting for climate change would likely add a further 0.8 metres to that level. If the Gorgie Road bridge, which is immediately downstream of the site, became blocked by 50%, the modelling suggests a further flood level increase of 0.8 metres could be experienced, although it should be noted that the soffit level of the bridge is well above river level.

1.62 In the light of the above findings, the FRA proposes the following mitigation measures:

- no residential accommodation on the basement floor;
- Finished floor levels of residential development set to at least 53.1 m above ordnance datum (AOD), which is 600 mm above the 1 in 200 year event with 40% climate change allowance;
- flood free access and egress to be provided for the 200 year event and 200 year + climate change event (dry access can be made via the amenity space);
- a flood response plan for the basement parking that may include barriers to prevent flood waters entering the parking areas;
- no loss of floodplain storage of the basement; and
- water-resistant materials and construction should be used where appropriate.

1.63 SEPA's 'Flood risk and land use vulnerability' guidance 2018 provides advice on the relative vulnerability of different land uses to flooding. Five categories are set out from 'most vulnerable' to 'water compatible'. The FRA categorises the existing site uses of offices and garages as within the 'least vulnerable' category and notes that SEPA policy for the redevelopment of sites within a 1 in 200 year flood risk area is that vulnerability should not increase. Residential use would be more vulnerable than the existing uses. However, the FRA concludes that if residential accommodation is kept above the basement level and has an access that is also above predicted flood levels, this would not conflict with SEPA policy. This would mean the basement would need to be used for 'least vulnerable' or 'water compatible uses'

1.64 As submitted, the proposal showed the basement level used for car and cycle parking but also as a gym and common room for use by residents of the student accommodation. In acknowledgement that this might be a source of concern from a flood risk perspective, the applicant has offered to accommodate such amenity space elsewhere within the building and to retain the basement level only for car and cycle parking and refuse storage. This could be secured by a planning condition, which would prevent

subsequent conversion of the basement space to a more sensitive use without prior approval.

1.65 I asked the applicant, the council and SEPA for further written submissions on the relevance (if any) of the anticipated study into the effectiveness of the Water of Leith flood prevention scheme and the relative vulnerability of existing and proposed uses. I also asked whether the proposed provision of electric vehicle (ev) charging infrastructure within the proposed basement car park would make it any more sensitive to flooding.

1.66 In response, the council advised that the study has yet to be completed and there is no confirmation of when it will be. The council did not address the issue of the relative vulnerability of the existing motorcycle showroom and workshop and the proposed development, but did confirm its satisfaction that the basement car park would accommodate flood water and that the proposed electric vehicle charging infrastructure would be compatible with that.

1.67 The applicant confirmed that the Water of Leith study was unlikely to be completed in the foreseeable future. Its view is that knowledge of flood risk is continually evolving and that it would be unreasonable to delay the determination of this application until that study is completed. It also confirmed that the council has reiterated that it agrees with the applicant's conclusions on the appropriateness of the proposed land uses.

1.68 With regard to proposed ev charging infrastructure, the applicant states that this would incorporate circuit breakers designed to cut power when the building management system's flood warning system was active. This system would be integrated with the operational Water of Leith Flood Warning System, which provides vulnerable parties advance warning of a severe storm event. The applicant also points out that, unlike the existing motorcycle retail unit, aside from the ev charging infrastructure, the proposed basement car park would have only high level lighting and no low-level power outlets.

1.69 SEPA's ability to provide further comments on the proposal has been hampered by its inability to access its planning casework system due to a cyber-attack in December 2020. It has however confirmed that, although the proposed parking area is at flood risk, it does not object to this aspect of the proposal as this is not a vulnerable land use. This is on the proviso that the basement car park was made as flood resilient as possible and that the proposed electric vehicle charging infrastructure was designed to be safe and secure during a flood event.

1.70 I am satisfied that there is no need to await publication of the Water of Leith study before determining this application. That study appears to be some way from completion and the application site is, in any event, not protected by the WoLFPS.

1.71 Unlike other land in the vicinity of the Water of Leith, the application site has not been identified in the LDP as an area of importance for flood management. Nevertheless, it is clear that in a 1 in 200 year event, it could be expected to flood significantly so if it is built upon, in accordance with LDP Policy Env 21, the design of the proposal should allow the site to continue to accommodate flood water rather than displacing it elsewhere. The FRA referred to the possible use of barriers to prevent flood waters entering the parking areas. However, that does not appear to be the applicant's intention and SEPA's assumption (set out below) is that the basement level would remain floodable.

1.72 SEPA's position on "stilted development" is being revised to help address the challenges facing Scotland in both mitigating against and adapting to future climate change. Such development is a form of flood risk mitigation where a building is elevated or supported by structures such as pillars. In SEPA's view the current development proposal falls within this description.

1.73 Recent discussions between SEPA planners and a small number of local authorities on the development of sites at flood risk have led it to reconsider its opposition to stilted development as a form of flood risk mitigation. The main driver for it reconsidering its position is climate change, and the challenge of avoiding development in areas of increasing flood risk while also enabling more compact urban forms to assist climate change mitigation. In SEPA's view, stilts are a form of flood risk mitigation that can achieve both, while ensuring people are safe from the impacts of flooding, provided that certain key principles are met.

1.74 Its position now is that stilted development may be permissible in clearly defined, exceptional circumstances. It intends to include the full detail of these in an update to its published guidance in due course (its ability to do this has been hampered by the recent cyber-attack), but has recently communicated its position to planning authorities and other stakeholders. Its position in response to this proposal is now one of "no objection" for the following reasons:

- the first occupied floor of the development is set at or above 53.1 m AOD (1 in 200 year plus 40% climate change plus freeboard level);
- the proposed development will have a neutral impact on floodplain capacity due to the floodable basement level (which exists at present);
- this site is previously developed (brownfield) and within a built-up area in Edinburgh;
- the proposed development is partially located within the functional floodplain but adjoins a developed area located outwith the functional floodplain;
- Safe, dry pedestrian access egress is provided.

1.75 SEPA adds that, while it is satisfied that safe pedestrian access/egress during a flood could be achieved, access/egress arrangements for vehicles, particularly emergency service vehicles and responders, are separate issues and are the responsibility of the local authority.

1.76 SEPA also advises that it operates a flood warning service in this location, and recommends that site users register with Floodline to receive flood warning messages in advance of flooding onset.

1.77 Taking all of the evidence into account, including SEPA's revised position on stilted development, I find the development to be in accordance with LDP Policy 21 because it would not increase a flood risk or be at risk of flooding itself, would not impede the flow of flood water or deprive a river system of flood water storage within the areas shown on the Proposals Map as areas of importance for flood management, or be prejudicial to existing or planned flood defence systems.

1.78 It Ministers are minded to grant planning permission, conditions would be required to ensure the ground floor of the premises was not used for a sensitive use and was allowed to flood so as not to displace flood water elsewhere.

Effect on heritage assets

1.80 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. LDP Policies Env 3, Env 8 and Env 9 set out the development plan policy on this issue.

1.81 The Historic Environment Policy for Scotland (HEPS), published by Historic Environment Scotland (HES) in May 2019, is a non-statutory policy statement that is relevant to all decisions affecting the historic environment. It contains six policies for managing the historic environment, all of which favour protection, understanding and promotion of the historic environment as well as the preservation of the benefits of the historic environment for future generations. Of particular relevance to this assessment, HEP3 and HEP4 both state 'if detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be in place'

1.82 HES's document (Managing change in the Historic Environment - Setting) states that 'setting' is the way the surroundings of an historic asset or place contribute to how it is understood, appreciated and experienced.

1.83 Potential effects on the historic environment were assessed by the applicant in an archaeological desk-based assessment². This considered effects on the setting of listed buildings and on below-ground remains of potential archaeological interest. The council's archaeologist also made submissions on these issues.

1.84 Stenhouse Mills, a category A listed building, lies on the opposite side of Stenhouse Mill Wynd, approximately 30 metres from the nearest edge of the appeal site. The applicant's desk-based assessment considered the potential for the proposed development to affect the setting of this nationally important building.

1.85 The building dates from the early seventeenth century. It was the mill house in a complex of mill buildings, the remainder of which have long since been demolished. It is possible that the application site was part of the wider mill complex. There is no evidence in the historical sources investigated by the applicant that it ever accommodated mill buildings, but it is possible that the mill lade once ran through it.

1.86 The listed building is closely bordered by the late twentieth century industrial development of Stenhouse Mill Wynd, which has affected its setting considerably. I agree with the applicant that the value of this historic asset is principally the architectural and historic interest of the building itself. Its former setting, which would have included a collection of mill buildings (now demolished), a mill lade (since infilled) and open farmland and woodland (now built upon), has been so altered as to make little contribution to the special interest of the building or how a visitor might understand it.

1.87 What is now proposed would be a tall and imposing development, built in close proximity to the listed building. However, it is already surrounded by modern development including a petrol filling station, that appears to have paid little regard to its special

² [Archaeological desk based assessment 2020](#)

architectural and historic interest. There is no reason to believe that the mill house was originally intended to have an especially dominant visual presence so I have no particular concern that what is now proposed would be a very much larger and more prominent structure. In any event, the existing ELS house and adjacent flats are already much larger and more prominent than the listed building.

1.88 I am also satisfied that adding a further building between the mill and river would not materially affect the relationship between the two, as the infilling of the mill lade has already removed any visual record of that historical connection.

1.89 Overall, I am satisfied that, in accordance with LDP Policy Env 3, there would be no harm to the setting of this listed building.

1.90 Other listed buildings in the locality include the Category B Listed Stenhouse Saughton Church on Gorgie Road, which is approximately 145 metres to the north-east of the application site, and four listed buildings that are part of the New Markets, built in the early 20th century, which are approximately 400 metres to the south-east. I agree with the applicant that, due to the lack of inter-visibility and the separation distances between these assets and the proposed development, none of these listed buildings is likely to have its setting materially affected by this proposal.

1.91 LDP Policies Env 8 Protection of Important Remains and Env 9 Development of Sites of Archaeological Significance aim to avoid unacceptable harm to archaeological remains. The applicant's investigation of the site suggests that at the time the mill was operational and probably before then, much of the site was undeveloped. It was subsequently developed in the early twentieth century, along with what is now the Stenhouse Mill Wynd industrial units, as a greyhound racing stadium. After that was demolished, probably in the 1980s, the existing buildings were constructed.

1.92 The applicant and the council's archaeologist agree that despite this development activity, there is potential for the site to contain below-ground remains of archaeological interest, which, in accordance with LDP Policies Env 8 and 9 and the HEPS, should be taken into account in any redevelopment proposal. I am satisfied that a planning condition requiring an archaeological site investigation prior to the commencement of development would adequately address this.

1.93 Taking all matters into account, I am content that the proposal would have no unacceptable effects on the historic environment and would comply with all historic environment-related requirements of the development plan.

Effect on the development potential of adjacent land

1.94 An objection has been received from the owner of the land to the immediate south / south-east. The objector contends that the proximity of the proposed development to the site boundary and the presence of windows in the student accommodation building that would face towards the adjacent land, would effectively sterilise the development potential of the adjacent site, whether for office or residential use.

1.95 LDP Policy Des 2 Co-ordinated Development expects, among other things, that development will not compromise the effective development of adjacent land.

1.96 I note from the applicant's pre-application consultation report³ that the adjacent land was originally proposed for inclusion within the development proposal but was removed on flood risk grounds following discussions with SEPA and the council's flood risk team.

1.97 SEPA cannot comment on that matter as it has been unable to access earlier correspondence on this case due to the cyber-attack. However, the council has confirmed that its flood prevention team considered that the land to the south east of the existing building to be part of the Water of Leith functional floodplain. In such locations, building or land raising operations are not supported in order to help mitigate flood risk and potential detriment to other receptors. The council regards the development potential of this adjacent land as highly constrained.

1.98 The applicant confirms that the adjacent land was originally incorporated within the proposed development site but was removed due to flood risk concerns and the adjacent land's planning history. This includes refusals of planning permission for a two storey office building in 2013 and for student accommodation in 2015, and a withdrawn application for residential development in 2020. In both the 2013 and 2015 proposals, the applicant refers to the council's bridges and flooding team and SEPA being resistant to that site being developed until it is protected by a flood protection scheme. The possibility of raising floor levels was considered in 2013 but was ruled out, as occupiers would be stranded in the event of a flood.

1.99 The applicant draws a distinction between the employment use of the adjacent land and what it considers to be a quasi-retail use of the appeal site (motorcycle sales) which it believes affects the policy context within which the principle of redeveloping the two sites should be assessed. The objector points out that a redevelopment of its employment land for offices would be appropriate, in principle, yet could be hindered by insufficient amenity standards being available for future occupants due to the proximity of what is currently proposed to the boundary.

1.100 This adjacent land is within the Stenhouse Mill Wynd employment land development. The video recording of the site and surroundings shows it in use for parking and storage. I agree with the applicant that this would be an employment use and that any alternative uses for that site would require to be assessed against LDP Policy Emp 9. This does not presume against the redevelopment of employment land for other purposes, but requires it to be demonstrated that the introduction of non-employment uses would not prejudice or inhibit the activities of any nearby use. It also expects such a proposal to contribute to the comprehensive regeneration and improvement of the wider area. I agree with the objector that an office development of that land would be appropriate in principle

³ [Pre-application consultation report 2020](#)

and would introduce some legitimate expectations in terms of outlook, daylight, sunlight and privacy, although not to the same extent as a residential development.

1.101 Paragraph 152 of the LDP, which provides the reasoned justification for Policy Des 2, confirms that a comprehensive approach to redevelopment and regeneration should be taken “wherever possible”, confirming that it may not always be possible (or appropriate) to delay progress with a particular scheme on grounds that it does not present a comprehensive regeneration solution for a wider area. In this instance, the adjacent land was originally proposed for inclusion within the application scheme, but was deleted largely on flooding grounds. Prior to that, earlier attempts to develop that land appear to have failed for similar reasons.

1.102 SEPA’s revised position on stilted development might improve the adjacent land’s development potential, but it is far from certain that the requirements upon which SEPA’s more relaxed position depends – including the minimum height of the accommodation above likely flood levels and the availability of a safe means of egress during a flood, could be accommodated. The evidence suggests that, until such time as it is protected by a flood protection scheme, the adjacent land has little prospect of securing planning permission for redevelopment.

1.103 Despite that conclusion, it is prudent to consider, in accordance with Policy Des 2 whether the current proposals for the application site would be likely to compromise the effective redevelopment of the adjacent land. That land would not rely on the application site for access, so it is the issues of overlooking and overshadowing raised by the objector that require to be considered.

1.104 LDP Policy Des 5 and the Edinburgh Design Guidance require an assessment of amenity issues including sunlight and daylight. The council agrees with the conclusions of the applicant’s analysis of overshadowing, daylight to windows, sunlight to amenity space and outlook, that, for the proposed development, the requirements of policy and guidance would be satisfied.

1.105 Policy Des 5 also expects that the amenity of neighbouring developments is not affected. The existing uses of the adjacent land - for parking and storage, are not particularly sensitive to such issues and the adjacent land owner does not dispute the council’s conclusions in respect of those current uses. I am satisfied that there is no conflict with Policy Des 5. However, the objector is not convinced that proper consideration has been given to potential future uses of the adjacent land, as is required by Policy Des 2.

1.106 I have considered the potential for overlooking and daylight / sunlight obstruction from the current proposal to render the adjacent land unsuitable for development.

1.107 With regard to overlooking, revisions were made to the windows in the south east facing wall of the proposed student accommodation building in order to avoid amenity concerns. This wall of the building would have a saw tooth profile with windows set at angles to the adjacent land rather than parallel to the boundary. The adjacent land owner notes that some windows in that wall would be angled less significantly away from the adjacent land. However, these are shown to be provided with a fretted metal screen, which the applicant has confirmed would not be see-through. This screen could be maintained in perpetuity by a planning condition and I see no reason why overlooking would detract from the development potential of the adjacent land.

1.108 I now turn to the potential obstruction of sunlight and daylight and the need to maintain adequate separation between the buildings proposed for the application site and any subsequently proposed for the adjacent land.

1.109 The proposal would come close to the site boundary meaning it would be necessary to accept limited separation between what is now proposed and a building on the adjacent site. This could reduce levels of daylight and/or sunlight and affect the availability of an unrestricted outlook from windows; both in any building proposed for the adjacent land and in parts of the development currently proposed. It is impossible to quantify the severity of this effect in the absence of detailed proposals for the adjacent land. In my view, a combination of careful design and a pragmatic approach to amenity standards – reflecting the urban, brownfield nature of the site might well permit some form of development on the adjacent site (assuming flood risk concerns could be overcome).

1.110 Ultimately, while it would be regrettable if a brownfield, sustainably located potential development site were unable to be redeveloped due to appropriate care not having been taken in the design of nearby redevelopment proposal, it would also be undesirable for an otherwise appropriate scheme to be prevented or delayed, pending the resolution of issues that may never actually arise.

1.111 Taking all matters into account, I agree with the council and the applicant that the design of the current proposal has had sufficient regard to the redevelopment potential of the adjacent land and accords with Policies Des 2 and Des 5.

Other matters

1.112 LDP Policy Hou 1 d) supports the principle of housing development in the urban area, provided that other policies are satisfied. Policy Hou 2 seeks the provision of a mix of unit types and sizes where practical. The proposed 28 residential units range in size from studios to three bedroom flats, which complies with that requirement, although its provision of only two, three bedroom units falls short of the expectation of the Edinburgh Design Guidance that at least 20% of units should be designed for growing families. Given the nature of the accommodation and its proximity to the proposed student housing, it is my view that insisting upon a higher proportion of family-sized units would be inappropriate.

1.113 For flatted development, Policy Hou 3 expects 10 square metres of communal green space per unit, which this proposal would deliver. Policy Hou 4 requires development density to be appropriate, having regard to the characteristics of the surrounding area and its accessibility. A number of higher density schemes have received permission in recent years including a five to seven storey, 248 bed student accommodation development on the opposite side of the Water of Leith, at 543 Gorgie Road. I find the current proposal to be compatible with its surroundings and its relatively high development density to be appropriate to a highly accessible location such as this.

1.114 Eight of the 28 proposed flats would be affordable homes. This exceeds the Policy Hou 6 requirement for 25% of all developments exceeding 12 units to be affordable. The council's Housing and Development Manager is content with the applicant's proposal that these be two bedroom units that are integrated with, and indistinguishable from, the market flats. The provision of these units should be secured by a planning obligation. The council's aim is for at least 70% of affordable homes to be in the social rent tenure and it is understood that the applicant intends all of the proposed flats to be social rented.

1.115 LDP Policy Hou 8 and the council's non-statutory student housing guidance are relevant to the student accommodation element of the proposal. The latter advises against the concentration of student accommodation in an area exceeding 50%. However, even with the accommodation that is being built on the opposite side of the Water of Leith, the council is satisfied that the concentration of student housing would be well below that level at approximately 28%.

1.116 The student housing guidance also seeks to incorporate 50% non-student housing on sites over 0.25 hectares in areas that are not within or sharing a boundary with a main university. Contrary to this expectation, the proposal would incorporate only 28% non-student housing. This document provides guidance rather than policy and the council is satisfied that a substantial level of housing is proposed in addition to the student accommodation. I agree that the mix of student and non-student housing is acceptable given the nature of the site and adjacent uses.

1.117 The proposed Class 1 and 2 units require to be assessed against Policy Ret 6. This seeks to restrict the development of such premises outside designated centres, essentially requiring that they be justified as an exception to the normal expectation that such uses be directed to centres in order to preserve their vitality and viability.

1.118 Chesser Local Centre is located 230 metres from the site. The proposed commercial units would meet the needs of residents of the proposed development and also cater for passing trade. In the case of the latter, there could be some diversion of trade away from the local centre. However, there could also be some additional trade for the

centre from the residential elements of the proposal, as it is unlikely that the proposed units within the scheme would meet all of the residents' requirements. The applicant has not followed all of the steps that are expected by Policy Ret 6 to justify an out of centre retail development. Therefore, the proposal does not fully comply with that policy. However, given the small scale of these commercial units, I agree with the council that it is unlikely that there would be any adverse impact upon the vitality and viability of the Chesser Local Centre.

1.119 The roads authority has no objections to the proposal. It notes that the proposed 33 car parking spaces and 264 cycle spaces would comply with the council's standards for a highly accessible location such as this. It requests a £2000 developer contribution towards the introduction of an order introducing waiting and loading restrictions on Stenhouse Mill Wynd. This could be incorporated within a planning obligation or in a separate undertaking.

1.120 So as to avoid disturbance to occupants of the proposed flats, the council's environmental protection team requests a planning condition controlling delivery hours to the proposed commercial premises. As the site lies within the council's Central Air Quality Management Area (AQMA), where fossil fuel powered vehicular traffic is a significant contributor to levels of nitrogen dioxide, the environmental protection team expects measures to be put in place to mitigate the effects of additional development. With that in mind, it would have preferred fewer car parking spaces being provided. However, the provision of electric vehicle (ev) charging infrastructure could help to address these concerns.

1.121 In response to this issue being raised, on 10 July 2020, the basement car parking layout was amended to show 28 ev parking / charging spaces rather than the five originally proposed. This enhanced level of ev provision could be secured by a planning condition

1.122 The Water of Leith is a Local Nature Conservation Site. LDP Policy Env 15 presumes against the approval of development likely to have an adverse impact on the flora, fauna, landscape, or geological features of such a site unless justified by exception. The Water of Leith Conservation Trust has raised concern over the potential for light pollution from the development to cause disturbance to wildlife. However, there is no evidence to suggest that any increase in light immissions into the river corridor would cause any demonstrable harm. Given the built-up nature of the site's surroundings, I would not expect there to be any measurable effect. Consequently I find no conflict with Policy Env 15.

1.123 Contrary to the views expressed by The Water of Leith Conservation Trust, I find the proposal to comply with Policy Des 10 Waterside Development because, despite its increased height and prominence from the river, the proposal is likely to represent a significant visual improvement over the unattractive façade that the motorcycle dealership premises presents to the Water of Leith.

1.124 The Trust doubts that the scheme achieves the 15 metre separation distance from the river bank, which is set out in the Edinburgh Design Guidance as a requirement when brownfield sites adjacent to the Water of Leith are to be redeveloped. I note that the purpose of this requirement of the guidance is to create opportunities to reinstate natural bank sides. As the site does not extend up to the Water of Leith (there is an intervening footpath) increasing the separation from the bank would not be likely to create an opportunity for bank side reinstatement without rerouting of the footpath and/or carrying out

other off-site works. Such measures would involve land which does not appear to be within the control of the applicant. And, in any event, I believe the proposed improvements to the site's frontage onto this footpath would be to its benefit and to the benefit of the wider Water of Leith corridor.

1.125 The report of handling concluded that, prior to the commencement of works on site, an index-linked financial contribution of £19,566 should be secured for additional educational infrastructure to support the projected increase in school rolls as a result of the development within the Sub-Area T-2 of the 'Tynecastle Education Contribution Zone'. The applicant has not challenged this request and, given the presence of some family sized residential accommodation within the scheme, this contribution seems appropriate.

Chapter 5: Conclusions and Recommendation

1.126 For the reasons set out above, with the exception of the retail element of the proposal not having been justified to the extent that is expected by LDP Policy Ret 6, I find the proposal to satisfy all relevant policy requirements. Overall, I am satisfied that the proposal is in accordance with the development plan and I have identified no material considerations to persuade me that, despite this, planning permission should be refused.

1.127 My recommendation is that Ministers grant planning permission subject to the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement securing eight of the residential units as affordable accommodation (all to be social rented tenure unless the council agrees otherwise) and the payment of developer financial contributions of £2000 towards an order restricting waiting and loading in Stenhouse Mill Wynd and £19,566 towards additional educational infrastructure within the Sub-Area T-2 of the Tynecastle Education Contribution Zone.

1.128 A number of planning conditions would be required, as set out in Appendix A to this report.

David Buylła
Principal Reporter

Appendix A: Conditions

1. Prior to the commencement of work, a detailed specification, including trade names and/or sample panels where appropriate, of all proposed external materials shall be submitted to and approved in writing by the Planning Authority. No other external materials than those so approved shall be used within the development hereby approved.

(Reason: to ensure the development has an appropriate appearance.)

2. Prior to the commencement of construction works on site:

a) a site survey (including intrusive investigation where necessary) shall be carried out to establish either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and /or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and

b) where necessary, a detailed schedule of any required remedial and/or protective measures, including their programming, shall be submitted to and approved in writing by the Planning Authority.

c) any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided for the approval of the Planning Authority.

(Reason:

3. No demolition/development shall take place on the site until the applicant has secured and implemented a programme of archaeological work (excavation, reporting and analysis and publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.

(Reason: in order to safeguard the interests of archaeological heritage.)

4. Prior to occupation, the mitigation measures specified in Section 5 (Proposed Mitigation Measures) of the ITP Energised Noise Impact Assessment (Technical Report No. 2970) and dated 05/06/2020 shall be implemented. Those being:

a) the living rooms and bedrooms overlooking Stenhouse Mill Wynd will require an acoustically equivalent glazing with noise reduction of at least 33 dB and trickle ventilation specification should provide at least 28 dB+Ctr noise attenuation. Trickle ventilation should achieve Building Standards levels of ventilation and details of the ventilation should be provided and agreed with the Planning Authority in advance of the development build commencing.

b) noise from the proposed commercial activities (internal) will meet NR15 in existing noise sensitive receptors (NSRs).

c) noise from the proposed fixed items of plant will include attenuation which will meet NR25 in existing and proposed NSRs when derived assuming open window attenuation. Details of any plant attenuation (if required) should be provided and agreed with the Planning Authority prior to the plant becoming operational.

d) the plant room walls will be made of concrete providing at least 43 dBRw. The plant room ceiling will be made of concrete providing at least 52 dBRw. The door to the plant room will provide at least 20 dBRw.

(Reason: in order to protect the amenity of the occupiers of the development.)

5. Prior to commencement of development, the developer must submit a maintenance schedule for the SUDS infrastructure for the approval of the Planning Authority. The approved schedule shall thereafter be implemented.

(Reason: in order to enable the Planning Authority to consider this matter in detail.)

6. Prior to commencement of development, a Landscape and Biodiversity Enhancement Plan detailing safeguarding and enhancement measures for biodiversity is required to be submitted in writing for approval by the Planning Authority. The Plan shall be implemented in accordance with the approved scheduling.

(Reason: in order to enable the Planning Authority to consider this matter in detail.)

7. Prior to the commencement of development, a tree protection plan showing accurate locations of all trees situated adjacent to the eastern boundary of the application site, including canopies, shall be submitted and approved in writing by the Planning Authority. The tree protection plan shall be implemented prior to construction work starting.

(Reason: in order to protect any existing trees.)

8. The basement areas shall be used only for parking and refuse storage and not at any time for a use that is not categorised by SEPA as a 'least vulnerable' or 'water compatible' use.

(Reason: this level of the development has the potential to flood).

9. Prior to occupation of any part of the approved development, 28 (7Kw, Type 2, Mode 2) electric vehicle charging points, as shown on drawing no. PL (23) 01 (Rev B) 10/07/2020 shall be installed and be fully operational. These charging points shall not be removed without the prior written approval of the Planning Authority.

(Reason: to ensure that adequate ev charging points are provided in the interests of local air quality and the minimisation of CO₂ emissions.)

10. There shall be no obstruction to flood water entering the basement level of the development and, if a flood event occurs, the basement shall be allowed to flood naturally.

(Reason: in order to retain flood plain capacity).

11. The lowest floor level of any residential accommodation shall be a minimum of 53.1 metres AOD.

(Reason: to protect future residents from flooding).

12. Delivery operations to the three commercial premises shall not take place outwith the hours of 0700 to 1900 Monday to Saturday and 0800 to 1800 on Sunday.

(Reason: to protect residential amenity.)

13. The fretted metal screens shown in drawing pl (20) 22 revision A on some of the windows facing the adjacent land to the south east shall be installed in accordance with the approved drawings prior to first occupation of the approved student accommodation. These screens shall not be altered or removed without the prior written approval of the Planning Authority.

(Reason: in order to avoid the impression of overlooking to the adjacent land.)

APPENDIX B: Approved Drawings

pl (20) 32 rev A

pl (20) 22 rev A

pl (20) 21 rev A

pl (20) 03 rev A

pl (20) 23 rev A

pl (20) 01

pl (20) 02

pl (20) 04

pl (20) 20

pl (20) 03

pl (20) 33

pl (20) 30

pl (20) 31

pl (21) 02

pl (20) 03

pl (20) 04

pl (23) 01 (Rev B)

pl (23) 02 (Rev B)

pl (23) 03 (Rev A)

pl (23) 04 (Rev A)

pl (23) 05 (Rev A)

pl (23) 06 (Rev A)

pl (23) 10

pl (23) 20 (Rev A)

pl (23) 21 (Rev A)

pl (23) 22 (Rev A)

pl (23) 30

pl (27) 01 (Rev A)

1931.L.G(92)002 Rev PO2

1931.L.G(92)003

1931.L.G(92)004

1931.L.G(92)010 Rev PO1

1931-RF-H-XX-DR-L-011 rev A



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