



Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2053
- Site address: 3 Eskview Villas, Eskbank, Dalkeith EH22 3BN
- Appeal by Mrs. Christina Walters against the decision by Midlothian Council
- Application for planning permission 18/00760/DPP dated 5 October 2018 refused by notice dated 30 January 2019.
- The development proposed: Erection of dwellinghouse, formation of access and car parking and associated works.
- Application drawings listed in schedule
- Date of site visit by Reporter: 6 May 2019

Date of appeal decision: 23 May 2019

Decision

I allow the appeal and grant planning permission subject to the 6 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The appeal site is within Eskbank and Ironmills Conservation Area I must also have regard to the duty imposed by section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act). This requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
2. The development plan comprises the South East Scotland Strategic Development Plan (SESPlan) approved in 2013, and the Midlothian Local Development Plan 2017, (the local development plan). Having regard to the development plan the key issue in this appeal is whether the design and scale of the proposed house is compatible with the character and appearance of Eskbank and Ironmills Conservation Area. No relevant policies in the strategic development plan have been brought to my attention and my decision is based upon an assessment of the appeal proposal in the context of the local development plan.
3. The site comprises of an unused area of some 430 square metres of former garden ground previously associated with a house at 3 Eskview Villas built in the 1980's and which, since the late 1990's, has accommodated the Happy Days Children's Nursery. The appeal

seeks planning permission for a two-storey, four-bedroomed detached house some 12.6 metres wide, 8.6 metres deep and 5.1 metres high. A 4.5 metre-wide vehicular access, acceptable to the council in road safety terms, would be taken from Eskview Villas to where three paved parking spaces would be formed. To the rear of the proposed house an enclosed rear garden of some 130 square-metres would be provided. To the council the modern design of the house does not respect the historic context of the surrounding area; it is neither complimentary to the character of its surroundings, nor is it an “assertive contrast”, making no attempt to interact with the character of the streetscape in the immediate surroundings. In refusing the planning application the council has advised that it does not consider the proposal to constitute the over-development of the site, nor is it opposed to the proposed access and car parking arrangements.

4. Located south of the two-storey terraced houses at Eskview Villas the site is bordered by mature trees, a hedge and a fence. The proposed building would be of a modern design with an irregular fenestration pattern which includes full height glazing. It would be finished in a “contemporary palette” of finishing materials and would have a slate roof, ivory coloured render, untreated larch timber cladding and grey coloured aluminium-clad doors and windows.

The Development Plan

5. The council’s sole reason for refusing the planning application was due to its conflict with local development plan policy ENV19 ‘Conservation Areas’ which requires there to be no adverse effect caused by new development on the character or appearance of a conservation area. In coming to my view on the proposal I have had regard to other relevant local development plan policies. Specifically, policy STRAT2: ‘Windfall Housing Sites’ allows housing on unallocated sites provided it meets specified criteria including its effect on the character of the area. Policy DEV2: ‘Protecting Amenity within the Built-Up Area’ requires that new development must be appropriate to the area where it is located. Policy DEV6 ‘Layout and Design of New Development’ requires good design and a high quality of architecture and the layout and design of new developments must meet specific criteria.

6. The supporting text to policy ENV19 provides that although conservation areas require a higher level of control, this does not mean that development is necessarily opposed; preserving and enhancing the character and appearance of the area is the primary concern. The local development plan also advises that innovative, well-designed contemporary buildings may be acceptable provided that the character, appearance and materials used complement the location. The council’s conservation area character assessment of Eskbank and Ironmills Conservation Area describes the area as a spacious, leafy, low density, late 19th century suburb which possesses high architectural quality with a variety of building styles. The character assessment stresses the need to ensure that new infill development is sensitively designed and relates carefully to adjacent buildings.

7. On my site inspection I observed in detail the prevailing character and appearance of this part of Eskbank and Ironmills Conservation Area, particularly in the vicinity of the appeal site. I agree with the council that the houses on the northern side of Eskview Villas are characterised by a well-integrated relationship between the existing terraced houses and the overall street-scene. I note that the adjacent category ‘A’ listed Eskbank House is

identified as a 'key building' in the conservation area character assessment and I am satisfied that the proposal would not adversely impact upon its setting. I also note that the trees around Glenesk House, to the west of the appeal site and visible from Eskbank Villas, are identified as a main tree group within the conservation area but because of the intervening distance I am satisfied that the proposal would not give rise to any threat to their integrity.

8. From my observations it was apparent to me that the part of the conservation area around the appeal site has seen pressure for new development. Most notably, the modern steel roof and functional, blank rear elevation of 'Wall Cottage' acts as a dominant focal point of the street scene, unrelated to the character and appearance of the adjacent terraced villas. The 1980's architecture of the adjoining nursery school, adapted from a house to its current use, reflects the architectural style of its time. Very recently the council has approved a large double-garage building some 22 metres east of the appeal site opposite Eskbank House, at the junction of Eskbank Villas and Glenesk Crescent. South-west of the appeal site planning permission has been granted on several occasions for extensive new building at Glenesk House in the conservation area, some of which is adjacent to and visible from the appeal site. A little more distant, at the rear of 42 Eskbank Road, I observed a residential plot with planning permission being advertised for sale pursuant to the council's approval of a new house in the grounds of an existing villa. I conclude that development pressures within this part of the conservation area have been allowed with, to a greater or lesser extent, respect to the conservation area's character and appearance.

9. I have taken into account the design and finish of some of the more recent developments around the site. Located in a well-screened site at the west end of Eskbank Villas the proposed house, even after the formation of its new access, would be markedly less visible than the double garage currently under construction at the corner of Eskbank Villas and Glenesk Crescent. While I am in little doubt that the house would be of a contemporary design I do not consider it to be "awkward and contrived" as suggested by persons opposing the proposal. The use of slate for its roof will be complimentary to the character and appearance of the conservation area, as recognised by the council. I find that this choice of finish would be more appropriate than both the red brickwork of the former house now used by the nursery and the steel roof on the building which dominates the west end of Eskbank Villas. I find that the contemporary design of the proposed house makes more of a positive contribution than several of these other developments and, overall, I conclude that it would not have an adverse effect on the conservation area.

10. Having regard to the findings I set out above and the character assessment for the conservation area I conclude that the innovative, well-designed contemporary building complies with local development plan policies STRAT2, DEV2 and DEV6. In accordance with policy ENV 19 'Conservation Areas' I conclude that the scale, choice of materials and design of the proposed house preserves and enhances the character and appearance of Eskbank and Ironmills Conservation Area.

Material Considerations

11. I have carefully assessed the representations that have been received for and against the proposal, including that received from Eskbank and Newbattle Community Council and

which is supportive of residents. However, as I set out above, I disagree with those comments that are made on the potential adverse effects of the proposal on Eskbank and Ironmills Conservation Area and on existing amenity. I have noted the lengthy planning history of the both the site and the adjacent children's nursery.

12. I have observed that there is little, if any, provision of off-street parking available to residents of Eskbank Villas. However I am mindful of the absence of any objection from the council on road safety grounds and the proposal would provide 3 off-street car parking spaces within the appeal site. The council's planning officer advises that this provision complies with the council's parking standards. Overall, I conclude that the limited additional traffic that would be generated by a single house would not exacerbate, in any significant way, any current difficulties relating to on-street car parking, or road safety generally, in Eskbank Villas and its adjacent streets.

13. Given the intervening distance between the front elevation of the proposed house and the houses at Eskbank Villas, set out by the council's planning officer, there are no grounds to oppose the proposal on the basis of the suggested loss of privacy, daylight and sunlight to existing houses at Eskbank Villas. I am satisfied that proper statutory publicity has been given to the proposal and matters relating to perceived impacts on child safety are not material planning considerations.

14. Scottish Planning Policy (SPP) provides that design is a material consideration and I have set out above, in accordance with SPP, why I conclude that the appeal should be allowed on design grounds.

15. Having regard to the statutory duty imposed by the 1997 Act, I conclude that the appeal site at 3 Eskbank Villas, Dalkeith does have the capacity to absorb the scale and the visual impact of the proposal and consequently it would not be to the detriment of the character and appearance of Eskbank and Ironmills Conservation Area.

16. I therefore conclude, for the reasons set out above, that the proposed development does accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Chris Norman

Reporter

Conditions

1. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- iv. the condition of the site on completion of the specified decontamination measures.

Reason: To ensure that any contamination and/or previous mineral workings on the site are adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

2. On completion of the decontamination works referred to in Condition (1) above and prior to any dwellinghouse on the site being occupied, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied unless or until the planning authority have approved the required validation.

Reason: To ensure that any contamination and/or previous mineral workings on the site are adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

3. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: To ensure the development does not result in the loss or damage of trees which merit retention in accordance with local and national planning guidance and advice.

4. Prior to any external finish materials, hard surface materials; and fences/boundary walls being installed details and, if requested, samples of the materials shall be submitted to and approved in writing by the planning authority. Thereafter development shall comply with the approved details unless otherwise approved in writing by the planning authority

Reason: To safeguard the character of the conservation area.

5. The parking and access arrangements shown on the approved site plan (drawing no. HD ESKH 04A) shall be completed and operational prior to the house being occupied.

Reason: To ensure that the house is provided with safe and adequate access and parking; and to protect the amenity of local residents.

6. Prior to the house being occupied the brick boundary wall shown on the approved site plan (drawing no. HD ESKH 04A) shall be completed.

Reason: To protect the amenity of future occupants of the dwellinghouse and to protect the amenity of children attending the neighbouring nursery.

Schedule of Plans

Location Plan HD ESK 01A
Block Plan HD ESK 02A
Site Plan (Existing) HD ESK 03
Site Plan (Proposed) HD ESK 04A
Proposed Floor Plan HD ESK 05A
Proposed Floor Plan HD ESK 06A
Roof Plan HD ESK 07A
Proposed Elevations West HD ESK 08A
Proposed Elevations North HD ESK 09A
Proposed Elevations South HD ESK 10A
Proposed Elevations East HD ESK 11A
Proposed Cross Section AA HD ESK 12A
Proposed Cross Section BB HD ESK 13A
Root Protection Details 1712.L.G(92)003
Access Statement
Coal Mining Risk Assessment
Design Statement
Landscape Architect Report

Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to

confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Reason: To accord with section 27B(2) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006.]

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).