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Decision by Karen Black, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2274
- Site address: 106-162 Leith Walk, Edinburgh, EH6 5DX
- Appeal by Drum (Steads Place) Ltd against the decision by the City of Edinburgh Council
- Application for planning permission 18/04332/FUL dated 3 August 2018 refused by notice dated 4 February 2019
- The development proposed: demolition of existing buildings and erection of a mixed use development including 53 affordable housing flats, student accommodation (471 bedrooms), hotel with 56 rooms (Class 7), restaurant(s) (Class 3) and space for potential community and live music venue (Class 10 and 11), retail (Class 1), public house (sui generis) or commercial uses (Class 2 and 4), associated infrastructure, landscaping and car parking
- Date of site visit by Reporter: 9 October 2019

Date of appeal decision: 20 December 2019

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## Decision

I dismiss the appeal and refuse planning permission.

## Preliminary matters

1. The scale and nature of the proposed development is such that it falls within the description of development described in Class 10(b) of Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 2017. The council issued a screening opinion to the effect that the proposed development did not require an environmental impact assessment. Having taken account of the criteria in Schedule 3 of the regulations, in terms of the scale, nature and location of the proposed development, I agree with the council's opinion.

2. I am aware that some amendments to the proposals were made prior to the determination of the planning application by the council's Development Management Sub Committee in January 2019. Following submission of the appeal, representations from local community groups questioned whether the plans and drawings provided by the appellant as part of the appeal submissions were those considered by the council in its determination of the planning application. Both the council and appellant, in response to my procedure notices have clarified the position in this respect. For the avoidance of doubt, my determination of this appeal is based upon the drawings listed on page 52 of the council's committee report dated 30 January 2019. The appellant's response dated 23



September 2019 to my procedure notice also details the appellant's document numbers for each of those.

3. My decision on the related conservation area consent appeal (CAC-230-2004) is the subject of a separate decision notice.

## Reasoning

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Special attention must be paid to the desirability of preserving or enhancing the character or appearance of the Leith Conservation Area within which part of the appeal site is located, and special regard must be had to the desirability of preserving the setting of nearby listed buildings, all in accordance with sections 64(1) and 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

5. The development plan in this case is the South East Scotland Strategic Development Plan 2013 (SESplan) and the Edinburgh Local Development Plan 2016 (LDP). No specific SESplan policies have been drawn to my attention in submissions. The LDP identifies the site within the urban area, with a safeguarded tram route T1 identified along the frontage of the site. The buildings on Leith Walk lie within Leith Town Centre and the Leith Conservation Area. The western part of the site is designated as open space. The council refers to local development plan policies Des 1 Design Quality and Context; Des 4 Development Design - Impact on Setting; Des 5 Development Design - Amenity; Env 5 Conservation Areas - Demolition of Buildings; Env 6 Conservation Areas - Development; Tra 3 Private Cycle Parking; and Hou 8 Student Accommodation in its decision notice dated 4 February 2019.

6. Taking account of the designations in the LDP and matters raised in representations, I also consider relevant policies to be: Des 3 Development Design - Incorporating and Enhancing Existing and Potential Features; Hou 6 Affordable Housing; Hou 10 Community Facilities; Emp 9 Employment Sites and Premises; Emp 10 Hotel Development; Ret 1 Town Centres First; Ret 3 Town Centres; Ret 9 Alternative Use of Shop Units; Env 3 Listed Buildings - Setting; Tra 2 Private Car Parking; and Tra 9 Cycle and Footpath Network.

7. The Leith Town Centre Supplementary Guidance 2017 also forms part of the development plan and I also take this into account in my assessment of the proposal.

8. Other material considerations include the council's non statutory guidance on student housing and affordable housing; Edinburgh Design Guidance 2018; Leith Conservation Area Character Appraisal 2015; Stead's Place and Jane Street Development Brief 2008; Scottish Planning Policy 2014; and Historic Environment Policy for Scotland 2019.

9. Having regard to the provisions of the development plan the main issues in this appeal are:

- the acceptability of the proposed uses;

- the impact of the proposed development on the character and appearance of the Leith Conservation Area;
- the impact of the proposed development on the setting of nearby listed buildings;
- amenity of neighbouring residential properties;
- cycle parking provision and transport;
- the economic benefits of the proposal.

### Proposed uses

#### (i) Student housing

10. The proposal includes provision of 471 student bedrooms, potentially accommodating 529 occupants. The student accommodation would be located above the retail units of the proposed new 5 storey building on the Leith Walk frontage and in the proposed blocks to the rear. The appellant advises that the internal design of the student accommodation is modelled on a Dutch 'student hotel' concept, managed by one operator and allowing public use of the proposed restaurant, conference, music rooms, student and library work areas.

11. The LDP recognises the housing needs of particular groups, including students. Policy Hou 8 supports the provision of purpose-built student accommodation in locations where there is accessibility to university and college facilities by sustainable transport means. The policy seeks to avoid excessive concentration of student accommodation where this would harm the established character or residential amenity, or be detrimental to the maintenance of a balanced community. The supporting text of the policy highlights that purpose built and managed schemes are preferable to conversion of family housing, thereby assisting the growth of the universities and the attractiveness of the city as a centre for higher education. In general, such provision can take place at relatively high densities, whilst not compromising design quality.

12. The council, in its reasons for refusal of the planning application states that the proposal does not meet the accessibility criteria in part a) of policy Hou 8.

13. The location of the appeal site on Leith Walk, being one of the main thoroughfares in the city, is well served by public transport. The appellant's transport assessment indicates that there are up to 53 services per hour serving bus stops within 400 metre walking distance of the site. I am also aware from my own experience and viewing the frequency of bus services at my site visit that there are regular bus services serving the Leith area with connections to the city centre, including rail stations and tram facilities and the wider city beyond. The safeguarded tram route is also identified along the frontage of the site in the LDP. Although the University of Edinburgh are no longer involved in the proposal, I note from the information contained in the council's student housing guidance that the location of university and college campuses are well spread across the city. I have no evidence to suggest that these facilities cannot be reached by public transport.

14. Although walking times to university and college campuses would be significant, I note that there are cycle lanes on Leith Walk and further cycle infrastructure is planned if the extended tram line goes ahead. With the provision of cycle facilities and the cycle-pedestrian shared use route, and connections to the surrounding area included in the

proposed development, combined with the availability of good public transport facilities in close proximity to the appeal site, I conclude that the proposal meets the requirements of part a) of policy Hou 8 of the LDP.

15. The council also refused the planning application on the basis that the proposal would result in an excessive concentration and imbalance of student accommodation in the locality, contrary to part b) of policy Hou 8. The council's view is that the new build residential gross floor area does not represent a minimum of 50% of the total new build housing and student accommodation gross floor area, as required by the council's non-statutory student housing guidance. A substantial number of representations also outline concerns about the potential intensification of a transient population in the neighbourhood. The view is that a large population of students would create an imbalanced population by displacing legitimate demand for long term housing, impacting negatively on amenities for long term residents. Concerns are also raised in respect of the withdrawal of Edinburgh University's involvement in the proposal and that without a future service provider, the hotel element would be absorbed into the student accommodation and the number of student rooms increased.

16. The appellant highlights that the accommodation is intended for post graduate students. However, policy Hou 8 of the LDP makes no distinction between accommodation for post graduate or under graduate students, nor does it specify who should manage such facilities. Furthermore, having regard to development plan policies and guidance, the issue of any future service provider is not relevant to determining whether or not the proposals are acceptable in planning terms. Such matters would be a commercial decision and outwith my remit in determining this appeal. Some representations also point out that internal access is provided between the proposed hotel and the student accommodation, however the internal layout arrangements would be matters for the relevant building standards/fire authorities etc. In the event that planning permission is granted, conditions could be imposed to restrict proposed uses, but not in respect of internal layouts. In this context, I also note that policy Des 5 of the LDP also dictates that buildings should be designed to be flexible in use.

17. Various figures in respect of the gross floor area have been presented to me. These range from 58:42 to 76:24 in terms of the proportion of student accommodation to new housing. The differences arise from the inclusion or otherwise of the floorspace of the hotel and other uses. Both sets of statistics confirm however that the proposal does not meet the 50% threshold as set out in the guidance.

18. The council's student housing guidance, being non statutory, does not form part of the development plan. It is nonetheless a material consideration in my determination of this appeal. It also outlines that the guidance should not be applied in isolation and consideration must be given to other matters addressed in the LDP and planning guidelines. I address these further matters below.

19. There are also differing views in respect of the definition of a community or locality as referenced in part b) of policy Hou 8. The student guidance document provides statistical information based on the 2011 census on the concentration of student population in Edinburgh. Maps 2(a) and (b) in the guidance provide an indication of the changes in the proportion of the full time student population from 2001 to 2011. The appeal site is not

included on the maps but at the opposite end of Leith Walk, the concentration of full time students shows a marked increase over that 10 year period.

20. Map 3 in the guidance indicates that the number of students living in privately rented accommodation or at home per square kilometre ranges from approximately 40 to 160 in the general area around the appeal site. Map 4 indicates that there was a very low proportion of students living in university managed accommodation in the general area around the appeal site.

21. Based on the 2011 census, and updated to include previously consented purpose built accommodation and the appeal proposal if approved, figures in both the appellant's planning statement and the council officer's committee report include reference to a 15-16% student population in the Leith Walk ward area. The student guidance states that where the student population is dominant, exceeding 50% of the population, there will be a greater potential imbalance within the community. In the absence of any other detailed statistics, I find the 15-16% estimates to be reasonable, and not disproportionate, nor does it result in an excessive concentration and imbalance of student accommodation in the locality. Furthermore, although as I agree above that the new build residential gross floor area does not represent a minimum of 50% of the total new build housing and student accommodation, the resultant increase in the student population would not conflict with the guidance. Similarly, I have no evidence to support the argument that the number of student rooms would increase, resulting in further imbalance in provision of such accommodation as some representations contend. Even if I did, I would be satisfied that this concern could be addressed by a suitably worded condition. For all these reasons, I conclude that the proposed development would not conflict with part b) of policy Hou 8 of the LDP. Consequently, I am satisfied that overall, the proposal complies with policy Hou 8.

#### (ii) Affordable housing

22. The appeal proposal includes 53 affordable flats, which would be owned and operated by a registered social landlord. The council's committee report advises that 35 would be for social rent and 18 mid-market. The flats would be provided within a standalone, 6 storey, L-shaped block on the western part of the appeal site.

23. Policy Hou 6 of the LDP seeks on-site provision of 25% affordable housing for proposals of 20 or more dwellings. Consistent with the council's student housing guidance, student accommodation is not included in the definition of 'residential development'. My interpretation of that is that the 25% requirement therefore applies only to the remaining residential uses. The council officer's committee report, supports that interpretation and confirms that in this case, all 53 proposed flats are to be affordable, equating to 100% provision on site.

24. Some representations question how the affordability element would be secured. The council's affordable housing guidance provides further information on the implementation and delivery of affordable housing. As outlined in the council's committee report, and agreed by the appellant, a legal agreement would be required to ensure provision of an agreed affordable tenure in the event that planning permission is granted. In these circumstances, I am satisfied that the proposal would comply with policy Hou 6.

(iii) Hotel and other uses

25. The appeal proposal includes a new 5 storey building along Leith Walk which would replace the existing red sandstone frontage building. The proposed uses include a hotel, restaurant, retail, public house, community space or live music venue and shared student spaces including music rooms, library/study area and function room.

26. The 2008 development brief provides support for hotel use on the site. Policy Emp 10 in the LDP also outlines support for hotel developments in locations within the urban area, with good public transport access to the city centre. As I conclude above, the appeal site is well served by public transport and is in an accessible location. Therefore there is no conflict with policy Emp 10. Matters in relation to the viability of the hotel are considered in paragraph 79 below.

27. The Leith Walk frontage of the appeal site is located within the Leith Town Centre as defined in the LDP. The Leith Town Centre Supplementary Guidance which provides further guidance in relation to LDP policy Ret 9, was adopted by the council in April 2017 and forms part of the development plan. The guidance supports the LDP objectives to maintain the existing and proposed broad distribution of centres throughout the city, to sustain their vitality and viability, and to improve the appearance, quality and attractiveness of all centres. Policy Ret 3 of the LDP also supports retail development which is compatible with the character and function of a centre.

28. The proposed uses gain general support from the 'town centres' first approach advocated in policy Ret 1 of the LDP. The council's supplementary guidance highlights that Leith town centre is "at the heart of the community and a hub for a wide range of activities from shopping and providing local services and as a leisure destination.....with a good mix of convenience shops to serve the large local population as well as specialist independent shops to draw in trade, making Leith a shopping destination." At my site visit, I also noted a wide range of busy cafés, restaurants and public houses and my perception overall is that it is a vibrant and well used town centre.

29. However, many representations outline concerns that the proposed demolition of the existing frontage property will result in the loss of local businesses and have an adverse impact on the vitality and viability of this part of Leith Walk and the area in general. Some also reference the potential for a community buy-out proposal. I am also aware that current leases have been terminated and at the time of my site visit there were only two operating businesses remaining on the Leith Walk frontage of the appeal site, with vacated units adjacent and to the rear. Whilst I can appreciate these concerns, I cannot intervene in, or address these issues as these are private commercial matters between the tenants and the landlord. As the council officer's committee report highlights, the final occupier of a unit is also not a planning matter. The planning system can only address the use and cannot make provision for specific businesses to occupy a particular building.

30. There would be a reduction in the amount of retail space provided for in the proposed development in comparison to the current uses. However, this part of the town centre is not in a defined frontage where shop uses have greater protection. For those locations not within a defined frontage supplementary guidance policy LTC 3 allows a range of uses including Class 2 (financial, professional and other services), Class 3 (food and

drink) or appropriate commercial or community uses. The proposed uses would meet these policy requirements.

31. The appeal site contains a number of vacated warehouses and offices uses. Representations highlight concerns about the loss of the business and employment space and that the proposed uses do not offset these losses. The council's economic development service in the consultation response to the planning application are also concerned that the proposed uses carry a risk that there will be zero or a negligible level of class 4 space, contrary to the requirements of policy Emp 9 of the LDP.

32. In the council officer's committee report, it is acknowledged that there is limited provision of class 4 business space in the proposed development. Reference is also made to the provisions of the 2008 development brief where small business space is suggested as a proposed use. Notwithstanding the lack of such provision however, the council have not cited such matters as a reason to refuse the application. Whilst I note the concerns raised I am satisfied that the provision of units on the frontage of Leith Walk for a range and mix of employment generating commercial units as proposed would meet the aims of policy Emp 9 of the LDP.

33. I address matters related to the impact on nearby employment uses in terms of amenity and the economic impact of the proposal in more detail below.

34. Overall, I conclude that the proposed mix of uses would meet the terms of policies Ret 1, Ret 3, Ret 9, Hou 10, Emp 9 and the 2017 Leith Town Centre Supplementary Guidance.

#### Impact on the character and appearance of the conservation area

35. The existing buildings on the Leith Walk frontage of the appeal site lie within the sub character area of Leith Walk within the Leith Conservation Area. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

36. Policy Env 6 of the LDP also reflects that statutory duty, setting out policy requirements for development in conservation areas whilst seeking consistency with any relevant conservation area character appraisal. Policies Des 1, Des 3 and Des 4 also require that the design and scale of new developments should have a positive impact on its surroundings and be appropriate to the character and appearance of the area.

37. Other material considerations include Scottish Planning Policy 2014 and Historic Environment Policy for Scotland, published in May 2019. Both provide policy guidance in respect of decision-making that affects the historic environment. The councils non-statutory 2018 Edinburgh Design Guidance and the 2008 development brief also reflect the above policy objectives of the LDP.

38. Leith Walk is also prominent in the city's townscape, and is the key arterial route between the city centre and Leith. Consequently, I consider the key requirements necessary are to consider the existing quality and character of the immediate and wider

area; the contribution that the existing buildings make to the quality and character of the area; and whether the existing characteristics and features worthy of retention on the site and in the surrounding area, have been identified, incorporated and enhanced through the design of the proposed development.

39. At my site visit, from within the appeal site itself and the area around Pilrig Park to the west, I could see the vacated warehouses and commercial buildings on the western part of the site, all of which are of modern construction with large areas of tarmacked parking areas. The modern 4 and 5 storey flatted properties at Stead's Place lie immediately to the south west of the appeal site. The 6 and 7 storey 'Spectrum' flats were visible to the rear on the western periphery of the appeal site. The general characteristics of these areas are of modern residential and commercial buildings. All of these properties lie outwith the conservation area boundary.

40. I also viewed the site from Calton Hill from where I was able to gain extensive elevated views of almost all of Leith Walk, the appeal site and a wider view of Leith, Granton and Newhaven to the north. I also travelled down the full length of Leith Walk and some of the surrounding streets. A range and mix of building types in terms of age and design is evident along the length of Leith Walk. Travelling north, towards the appeal site from Elm Row and the core city centre area, the built form on either side of the street is predominantly of high density 4 and 5 storey tenement properties with commercial and retail buildings at ground floor level. I also noted a large modern infill development at Shrub Place of similar scale and height. Overall, I consider the character of this area of Leith Walk to be one of uniformity and high density tenemental development.

41. Approaching the appeal site from the south, I perceived a marked change in the character of Leith Walk at a point at, and north of the modern development at the corner of Springfield Street, where the street, although dense in parts, has a wide and open feel due mainly to the more varied architectural styles and the smaller scale and height of buildings. The modern high rise flats on Constitution Street are visible in distant views for a substantial length of Leith Walk.

42. Immediately opposite the appeal site on Leith Walk are residential, retail and National Health Service buildings, ranging in height from single storey to 4½ storey, all of varying style and materials. From within the appeal site itself, with a view over the existing 2 storey buildings and towards the properties opposite, I was able to view only the chimneys, top floor windows and roofs of these buildings. From the former railway embankment, which runs adjacent to the northern boundary of the appeal site I noted the smaller scale and mix of industrial and commercial buildings on Jane Street. The modern 3 storey telephone exchange building was visible outwith the north west corner boundary of the appeal site. The buildings at 99-105 Leith Walk, opposite the appeal site, which formed part of the original railway bridge are also constructed in red sandstone and of a similar height and scale to the frontage building on the appeal site.

43. The conservation area character appraisal published by the council in 2015 refers to the diverse pattern, building types and uses on the west side of the Leith Walk sub character area, within which the frontage building is located. It describes the area as being less co-ordinated with Georgian development, tenements and industrial buildings, with tenements being the predominant form with a much greater variety in their design, heights,



building lines, roofscapes and ages. It also states that in places, tenements are interspersed with town houses or smaller tenements well set back with front gardens to the street. I also note that Historic Environment Scotland and local community and heritage groups consider that the character of the sub-area cannot solely be defined by the tenement at this end of Leith Walk. That description reflects my own perception of the character of the area.

44. The 2 storey red sandstone and granite building, constructed in the 1930s on the Leith Walk frontage of the appeal site has an historical and architectural association with the former railway company, as do the embankments, railway arches, gate piers and former railway bridge adjacent to the appeal site. The former railway bridge buildings directly opposite the appeal site also clearly have an architectural and historical association with the buildings on the frontage and adjacent to the appeal site. The appellant's heritage statement refers to the 'intrusion' of the Leith rail line and goods yard in the early 20<sup>th</sup> century and this area of Leith Walk as having 'unresolved' character and appearance. I cannot agree with that assertion. The overall character, as highlighted by Historic Environment Scotland reflects the influence transportation infrastructure and its railway heritage has had on the area, and this character is still evident. Overall, I consider the character of the area, to be quite distinct and in many ways unique from other areas of Leith Walk to the south.

45. I have been provided with a great deal of information on the evolution and design of the red sandstone buildings on the Leith Walk frontage. Historic Environment Scotland comment that the red sandstone ashlar frontage has a strong horizontal emphasis with a repetition of features on a symmetrical elevation. It has a far higher standard of architectural treatment when compared to the building's utilitarian brick rear. The strong horizontal emphasis, extends to the stone's coursing, with a general repetition of features along a symmetrical façade. Decorative features are used sparingly, a notable exception being the polished granite Doric pilasters dividing the individual bays at first floor, and corresponding to the individual shop units. Although assessed by Historic Environment Scotland and found not to be worthy of listing, I note that in response to the planning application Historic Environment Scotland comments that the building makes a positive contribution to the conservation area, but not a significant one. It also highlights that attempts should be made to retain the building. I consider matters related to the condition of, and potential retention of the building on the Leith Walk frontage in the related decision notice on the appeal against refusal of conservation area consent (CAC-230-2004).

46. I agree that the intactness and external appearance of the building has been compromised, largely due to alterations to the shopfronts and windows and boarding up of vacant units. Nevertheless, at my site visit and viewing the appeal site from both the north and south, the building draws the eye and appears as a distinctive, and in many ways, a unique feature and landmark in the street, with diversity in its architectural style. With its highly visible red sandstone and distinctive long frontage it adds interest to the streetscape and conservation area and to this part of Leith Walk. I also agree with local community and heritage groups that the building is in many respects iconic with its low lying nature and scale being not only consistent with the character, but also reinforcing that character. For all these reasons I find that the existing building makes a positive contribution to the character and appearance of the area.

47. The proposed 6 and 7 storey residential and student flats to the rear of the Leith Walk frontage are designed in a contemporary modern style, with a mix of grey mansard roofs, copper cladding and buff brickwork walls. The council's concerns relate to the development being 'over-bearing and incongruous in its height, scale and massing' and the proposed replacement building on the Leith Walk frontage was considered not of a high enough design standard to outweigh the loss of the existing building.

48. Local community and heritage groups refer to the comments of the Edinburgh Urban Design Panel. The panel's comments were based on an earlier iteration of the proposal, but it considered that higher development could be placed to the rear away from Leith Walk. I note that the height of this element of the proposal, being up to 7 storeys in parts is not out of context with the Spectrum development to the rear of the appeal site towards Pilrig Park. However, I would estimate the difference in ground levels between the appeal site and the immediately adjoining flats on Stead's Place to the south west to be around 2 metres. The appellant's figure 2, dated 26 June 2019, submitted in response to comments in respect of daylight standards provides a section drawing indicating that the proposed student housing would be at least one storey higher than the flats at Stead's Place. The council's committee report refers to the proposed flats being 'slightly higher'. I therefore find it reasonable to conclude that the proposed new flats would be higher than the adjacent 5 storey flats on Stead's Place.

49. I acknowledge that this rear part of the appeal site lies outwith the conservation area. However, I consider that the introduction of a development at 6 and 7 storeys high would be visible, not only from Leith Walk and other streets within the conservation area to the north and east. In these circumstances, my view is that harm to the character or appearance of a conservation area can still arise if development, which in this case lies immediately adjacent to the boundary of the conservation area can be seen in views from within the conservation area itself. I also note that the non-statutory 2008 development brief seeks to establish a building height that matches adjacent and opposite buildings. Consequently, I agree with the council that this element of the proposal does not meet those objectives, where its incongruous height would have a harmful impact, and would neither preserve nor enhance the character and appearance of the adjacent conservation area.

50. The proposed materials for the new residential flats and student accommodation are similar to those used on the adjacent flats at Stead's Place. I also understand that the layout of the proposed flats has been influenced by servitude rights of access and water main restrictions. The residential blocks have been orientated around south facing courtyards and the design concept in this respect is acceptable. Consequently, I am satisfied that these particular aspects of the proposals conform to the relevant design policies and guidance I refer to above.

51. The 5 storey building which is proposed to replace the red sandstone frontage building is of contemporary design. The southernmost element would contain a glazed curved corner block with a red sandstone clad frontage on the ground floor and buff sandstone with glazed shop fronts at ground floor level. The northern block, adjacent to the bridge abutment, would be of a similar design and style, with red sandstone cladding on the ground floor, buff sandstone above and a mixed glazing pattern at ground floor level. The central section is proposed to incorporate a glazed frontage to the hotel/restaurant, with the

first to third floor level having a copper coloured façade. The majority of windows on the upper floors of the proposed frontage have a vertical fenestration pattern. A mansard style roof is proposed on the fifth floor.

52. I consider that the contemporary design has some positive features, including the use of red and buff sandstone, and the proposal to re-use the existing sandstone gate piers at the entrance to the site. The use of the sandstone and copper cladding help to define the separate uses and add some interest to the extensive 5 storey façade, as do the corner feature windows which have been influenced by similar features on nearby buildings. However, despite the use of these materials, given the unique character of the existing building and the contribution it makes to the conservation area as I describe above, I agree with the council's position in that the scale and height, in combination with the incongruous modern façade of the proposed new building, does not in my view make a positive contribution or add character to the conservation area. Indeed, I find that the proposed building, at 5 storeys, to be of a height and scale which would have a harmful impact on the character and appearance of the conservation area. It would be an overbearing and incongruous feature in this part of Leith town centre and the conservation area where the smaller scale and mixed townscape, as I describe above, would be completely overwhelmed. It therefore fails, in my view, to meet the requirement of preserving or enhancing the character or appearance of the area.

53. Some local residents are of the view that the site has the potential to accommodate an outstanding development of architectural quality and design. The council's LDP policies and the non-statutory design guidance require that new developments should be sensitive to historic character, be innovative and locally distinctive, and generally attain high standards in design. The proposed development does not in my opinion achieve those objectives. Although there are some positive features as I conclude above, overall I consider that the proposal would have a harmful impact and would neither preserve nor enhance the character and appearance of the conservation area as required by the 1997 Act, nor would it meet the objectives of the council's design policies and guidance.

54. I also note the appellant's references to other proposals approved by the council nearby. Specific reference is made to new development at Shrub Place at the southern end of Leith Walk and a site at Tennant Street. I must however consider each case on its own merits. The examples cited, located some 800 metres and 300 metres respectively from the appeal site, are unique to their own setting and character of the immediate area within which they are located. I have no evidence of what existed previously on either site and I am satisfied that this proposal is materially different in a number of respects from those other decisions.

55. The appellant also refers to the potential for wider regeneration benefits as envisaged in the development brief. However, for all the above reasons, I conclude that the merits of the proposal would not outweigh the harm to the character and appearance of this prominent site in Leith Walk town centre and the Leith Conservation Area. As such the appeal proposal fails to meet the statutory tests and policies Des 1, Des 3, Des 4 and Env 6 of the LDP.

56. Scottish Planning Policy also seeks that proposals for development within conservation areas and proposals outwith, which will impact on its appearance, character or

setting, should preserve or enhance the character and appearance of the conservation area. Historic Environment Policy for Scotland also makes specific reference to the need to recognise the 'sense of place' and cultural significance of places. In this case, I note the substantial number of representations expressing concerns about the potential loss of the social and cultural heritage of this part of Leith Walk. Although in some respects an intangible quality, it is clear to me that the existing frontage building also makes a significant contribution to the cultural and social fabric of the area.

57. Both of these national policy documents are significant material considerations in my determination of this appeal. For the same reasons I outline above, I conclude that the proposals do not meet the requirements of Scottish Planning Policy, nor those of Historic Environment Policy for Scotland.

#### Impact on the setting of adjacent listed buildings

58. The Listed Buildings and Conservation Areas Act also requires me to have special regard to the desirability of preserving the setting of any nearby listed buildings. Policy Env 3 of the LDP reflects this statutory requirement.

59. The appellant's heritage statement identifies a number of listed buildings on the east side of Leith Walk and the property at 7 Stead's Place, located to the south of the appeal site, all of which the proposed development, it states, would have a perceptible impact on their setting.

60. I agree that the setting of the B listed building at 7 Stead's Place has already been compromised by the surrounding modern flatted development on Stead's Place itself. I also agree that there would be no adverse impact on the setting of the properties at 169-177 and 185-193 Leith Walk. However, I cannot agree that the setting of the C listed community centre building at 165 Leith Walk would be preserved. This building is located directly opposite the existing frontage building on the appeal site and is viewed in context with, and is visible to and from the existing building on the appeal site frontage. It is of similar industrial heritage and was built just after the appeal site building as part of the development of the tramway depot. It is physically detached from adjacent buildings and at 2 storeys in height and of similar age, with a sandstone frontage of similar scale and design to the existing building on the appeal site frontage. I have concluded (in relation to the conservation area at paragraph 52 above) that the scale and height of the proposed development would result in the introduction of an overbearing and incongruous feature which would have a harmful impact on the character and appearance of the conservation area. For the same reasons I also conclude that the proposed development would not preserve the setting of the listed building and would be contrary to policy Env 3.

#### Residential amenity

61. Policy Des 5 of the LDP requires that development proposals must demonstrate that they would not lead to a significant detrimental impact on the amenity of neighbouring developments in relation to sunlight, daylight, privacy and noise. The council's non statutory design guidance also requires that new buildings are laid out so that reasonable levels of daylight are maintained into existing buildings and reasonable levels of sunlight are maintained to existing gardens and spaces.

62. Local community groups and residents have expressed concerns about the impact the proposed development would have on the residential amenity of properties at Stead's Place to the south west of the appeal site, and those on the opposite side of Leith Walk. The council refused the planning application because the proposal would have a detrimental impact on the levels of daylight afforded to existing residential properties, being contrary to part a) of policy Des 5.

63. Vertical Sky Component (VSC) modelling, based on nationally recognised good practice guidance on site layout planning has been used in the appellant's daylight and sunlight assessment in order to determine if there would be any impacts on daylight, sunlight, overshadowing and amenity for properties in the vicinity of the proposal. For daylight, the council's guidance requires VSC to remain at more than 27% or 0.8 of its former value. The conclusions of the assessment indicate that the windows on the first floor and above at the residential property at 129 Leith Walk, at 28 - 29% are more than the required 27% or 0.8 of its former value. On the ground floor of the adjacent commercial buildings, the VSC would be less than the recommended 27% value. I note that policy Des 5 applies to neighbouring developments in the general sense, however as I note above, the council's reasons for refusal relate specifically to residential amenity. At my site visit, I was also able to view the appeal site from the first floor windows of the residential property at 129 Leith Walk and although the proposed new development would be visible from all 5 windows on this frontage, I have no further technical evidence before me to conclude that there would be any conflict with policy Des 5 nor the non-statutory guidance in respect of this particular property.

64. Local community councils commented that some windows on the adjacent Stead's Place development had been omitted from the modelling assessment. In response, the appellant updated the modelling to include the lower ground floor windows on the north east elevation (having been excluded from the assessment as the retaining wall on the south western boundary of the appeal site already obstructs daylight to these windows). There are currently 7 existing windows, including 3 at the lower ground floor level at Stead's Place already falling below the 27% VSC value. Post development, there would be 23 windows, excluding those at lower ground floor below the VSC value. The appellant argues however that the level of reduction at between 0.55 and 0.79 (0.8 being the requirement as noted above) is minimal and within the allowable limits. The council on the other hand do not see this as a minor infringement as it would result in the loss of amenity to neighbouring properties and therefore contrary to policy Des 5 of the LDP.

65. Whilst I am aware that the advice contained in the good practice guidance on site layout planning is not mandatory and that it is not to be used as an instrument of planning policy, I must give consideration to the outcomes of the assessment in my determination of the proposal in the context of policy Des 5. Notwithstanding the flexibility that can be applied to the calculation methods, I am not satisfied that a loss of daylight to 23 windows in the adjacent flats, although being within 'close range' of the allowable limits as the appellant contends, amounts to compliance with the policy. Clearly there would be some adverse impacts on these adjoining properties, thereby adding further weight to my concerns about the scale and height of the proposed student and residential flats.

66. In relation to overshadowing and the sun path analysis, representations outline concerns about the increase in height from the current building resulting in overshadowing of Leith Walk in the late afternoon. I note however that the council's guidance refers only to reasonable levels of sunlight being maintained to existing gardens and spaces. The proposals are acceptable in this respect. I also note that the modelling undertaken for the proposed flats in the development itself indicates that all bedrooms, livingrooms and kitchens within the proposed flats and student flat block meet the terms of the guidance and policy Des 5. I also note that the council does not have concerns in this respect.

67. In terms of privacy, the proposed development would be 23 metres from properties on the opposite side of Leith Walk. Distances to the flats on Stead's Place range from 22 to 33 metres. To the north on Jane Street, the existing flats are approximately 27 metres away. I agree that these are acceptable separation distances.

68. The appeal site lies immediately to the south of existing commercial garage premises operating from within, and under the former railway embankment and arches on Jane Street. A number of representations refer to the potential for noise and odour arising from these businesses and that the proposed development may prejudice the existing business uses. Concerns also relate to potential noise nuisance from the proposed music venue.

69. The appellant's noise survey and assessment document indicates that an extract fan from one of the garage premises below the railway arches was dominant. Other than the extract fan, no noise egress from these premises was readily noticeable. The results reflect my own observations at my site visit.

70. The appellant's assessment recognises that the extract needs to be acoustically attenuated and the council's environmental protection team advise that in the event that planning permission is granted, a condition would be required to ensure implementation of a scheme of mitigation. I have been provided with written confirmation of the garage owner's acceptance that any improvement and/or mitigation works required would be undertaken at the appellant's expense. Both the council and appellant are in agreement that a suspensive or negative condition would comply with Circular 4/1998. Had I been minded to allow the appeal, I agree that a planning condition could have secured the required mitigation works in compliance with the tests set out in the circular. I also note the council's acceptance of the use of conditions to require implementation of further on site measures in respect of extraction, ventilation and acoustic attenuation measures. In terms of noise and odour matters, the proposal would therefore comply with policy Des 5.

71. Taking all the above into account, my conclusion overall on the residential amenity issue is that there would be some harm to the amenity on neighbouring residential properties in respect of daylighting matters, resulting in conflict with policy Des 5.

#### Cycle parking and transport matters

72. The council refused the proposal as being contrary to policy Tra 3 of the LDP as the proposed private cycle parking provision does not accord with the standards set out in the council's non-statutory design guidance.

73. I note that the cycle parking provision for the residential and commercial elements of the proposal satisfy the levels sought in the council's non-statutory guidance. However, proposed provision for the student accommodation, at 174 spaces falls 33% short of the required 522 spaces. The appellant's transport assessment provides justification for the reduced provision, based on cycle ownership surveys and actual use of cycles by students. Rather than the council's guidance requirement of one space per bed, proposed provision is one space per three beds. It further argues that the reduced provision reflects the accessibility of the site by foot and public transport. The council's standards assume that every student will own a bicycle. The council also contends that with additional investment in cycle infrastructure on Leith Walk and the network across the city, these factors would contribute to an uptake in cycling and therefore generate a need to provide 100% cycle parking for developments of this scale.

74. I have concluded above that the appeal site is an accessible location with good access to public transport. I also note that the council's guidance is non statutory and does not therefore form part of the development plan. Nonetheless, I agree that adequate cycle provision and infrastructure would support the strategy and principles of the LDP by reducing reliance on travel by private car and sustainable development objectives. Had I been minded to allow the appeal, I agree that a planning condition could have secured the required cycle parking or as the council's guidance suggests, a suitable legal agreement could be used to secure contributions to provide cycle parking in an appropriate location in the vicinity of the site. In such circumstances, the proposal would comply with policy Tra 3.

75. I note that the council has no concerns in respect of car parking provision and potential traffic impacts arising from the proposal. Parking provision meets council standards and there is no conflict with policy Tra 2 of the LDP.

76. Some residents are concerned about the potential loss of the existing informal pedestrian and cycle link through to Pilrig Park and surrounding area to the north and west of the appeal site. On the day of my site visit I noted a substantial number of walkers and cyclists using the route. The 2008 development brief seeks to improve the pedestrian and cycle access through the site and the design panel also encouraged an enhanced route through the site. The appeal proposal includes provision for a surfaced 3 metre wide cycle/footpath link and I agree that this element of the proposal is in compliance with policy Tra 9 of the LDP.

#### Economic benefits

77. Many local residents and community groups raise concerns about the termination of leases of the current and previous occupiers of the shops, pubs, offices and local businesses on the appeal site. However, as the planning officer's committee report highlights, this in itself is a commercial, and not a planning matter. However, Scottish Planning Policy also requires the economic benefits of a development to be taken into account in determining planning applications. Consequently, the economic impact of the appeal proposal is a material consideration in my determination of the appeal.

78. A comparison between the figures included in the appellant's economic impact assessment and those provided by council's economic development service indicate that between 195 to 211 jobs would be provided if the development was fully occupied. The

impact assessment suggests there would be an additional 15-35 jobs and 25%-40% greater net additional gross value added per annum. I am aware that these are high level and estimated figures, and the overall impact of the proposed scheme could vary given that the end uses are not determined. Overall, however I agree that the appeal proposal has the potential to generate economic benefits as a result of construction, operation of commercial uses and the additional spending in the area created by new households if fully developed.

79. Local community groups have also questioned the viability of the appeal proposal following the withdrawal of Edinburgh University's involvement in the proposal. The council does not cite this as a reason to refuse the application. Furthermore, I have no financial evidence before me to conclude that the proposed new development would not be economically viable without the involvement of the university. I have addressed matters relating to the viability of retaining the existing building on the Leith Walk frontage in my decision notice on the proposal to demolish this building (CAC-230-2004).

### Other matters

80. There are other relevant LDP policies relating to open space, contaminated land, sustainable buildings, flooding, drainage and developer contributions. On the basis of the evidence before me none of these considerations raise issues that could not be addressed by conditions or a legal agreement had I been minded to allow this appeal.

81. The appellant also cites case law, in which reference is made to a decision by the House of Lords. The appellant acknowledges that the decision confirms that high priority must be given to the objective of preserving or enhancing the character or appearance of the area and if any development would conflict with that objective, there is a strong presumption against the grant of planning permission. That presumption can, however, be overcome by material considerations, such as if the development is desirable on the grounds of some other public interest. The appellant indicates, under reference to that case, that "the statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves the character or appearance unharmed, that is to say, preserved". The appellant argues that the appeal proposal leaves the character or appearance of the conservation area unharmed.

82. In this case I have concluded that the proposed development does not preserve, or enhance the character or appearance of the conservation area; namely leave it unharmed in light of the case cited.

### Conclusions

83. Drawing all of the above together, I find the proposed development is neither innovative nor locally distinctive. Furthermore, the height and scale of the proposed development would be an overbearing and incongruous feature in this part of Leith town centre and the conservation area, where the smaller scale and mixed townscape, as I describe above, would be completely overwhelmed. The proposal would not, in my view, preserve or enhance (namely leave it unharmed in light of the case cited by the appellant) the character and appearance of the conservation area, nor would it preserve the setting of the nearby listed building. Consequently I find that the proposal does not meet the statutory



tests established in sections 64(1) and 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

84. The appellant argues that Scottish Planning Policy, the council's non-statutory guidance and the 2008 development brief are relevant material considerations which would justify granting planning permission. I have acknowledged the proposal would have some economic benefits in accordance with Scottish Planning Policy. There are some positive design features, as I describe above, and it would also meet the terms of the council's student and affordable housing guidance and uses proposed in the design brief. However, I do not consider these material considerations outweigh the conflict I have found with the development plan with respect to the harm the proposal would cause to the character and appearance of the conservation area and the setting of the nearby listed building, all being contrary to policies Des 1, Des 3, Des 4, Des 5, Env 3 and Env 6 of the LDP.

85. In summary, I conclude that the proposed development does not accord overall with the development plan and there are no material considerations which would justify granting planning permission. It does not meet the statutory tests of the 1997 Act. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions. Consequently, planning permission should be refused.

*Karen Black*  
Reporter