

**REPORT TO:** Planning Committee  
**MEETING DATE:** 3 October 2023  
**BY:** Executive Director for Place  
**SUBJECT:** Application for Planning Permission for Consideration

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*Note – this application was called off the Scheme of Delegation List by Councillor Forrest for the following reason: Due to the concerns raised in the community with me over the size of this structure, I feel that the matter would benefit from a full discussion at the Planning Committee.*

Application No. **22/00812/P**  
Proposal Erection of sheds, greenhouse and fencing (Part Retrospective)  
Location **68 Whitecraig Road  
Whitecraig  
East Lothian  
EH21 8ND**

Applicant Mr Thomas Laird  
Per Camerons Strachan Yuill Architects

**RECOMMENDATION** Consent Granted

## **REPORT OF HANDLING**

### **PROPOSAL**

This application relates to the rear garden of a ground floor flat within a 4 in a block flatted building that is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. It is within the Battle of Pinkie Historic Battlefield.

The rear garden of the flat is bounded to the northwest by the rear garden of 70 Whitecraig Road, an upper flat within the same 4 in the block, to the northeast by a communal path that runs along the northeast side of the applicant's rear garden, between it and the public road. To the southwest is another neighbouring garden and to the southeast is the public road.

Planning permission is sought retrospectively for two sheds and a greenhouse building that have been erected within the rear garden of the flatted property and for fences and a gate that have also been erected in the rear garden.

The two shed and greenhouse buildings have been laid out in an 'L' shape configuration within the garden. The greenhouse is some 1.9m in width and some 1.9m in length and sits within the northwest corner of the garden, some 0.1m from the fences that enclose the northwest and southwest boundaries of the garden. The smaller of the two sheds is some 1.8m in length and some 4.6m in width and sits adjacent to the south east side of the greenhouse building. The larger shed is some 3m in width and some 4.6m in length and attaches to the southeast side of that smaller shed. Each of the structures are some 2.1 metres in height to the ridge of their roofs.

The greenhouse element has been constructed from clear corrugated polycarbonate sheeting within a timber frame while the remaining sheds are constructed from painted horizontal timber cladding panels with a felt roof.

The fences and gate that have been erected comprise: (i) a 5.7m length of 1.9m high timber fence that has been erected along part of the northwest (rear) boundary of the garden between the applicant's garden and the garden of 70 Whitecraig Road, (ii) a 1.8m high fence that has been erected along the west edge of the communal path and which separates that path from the applicant's rear garden. That fence runs along the edge of the communal path for some 7m in a southerly direction and then turns 90 degrees west to run parallel with the rear elevation of the flatted building for another 3.6m and (iii) a 1.8m timber gate and side panel that have been erected between the rear elevation of the flatted building and that fence running parallel with the rear elevation of the flatted building.

Planning permission is also sought for the replacement of the gate at the northeastern end of the fence that encloses the northwest boundary of the rear garden with a section of 1.9m high timber fence. That gate is positioned between the fence that has been erected to enclose the northeast boundary of the applicant's garden and the lower metal railings that enclose the northeastern edge of the communal path and allows access for the occupants of 70 Whitecraig Road - the upper flat within the 4 in a block - into their rear garden from the communal path.

It is also understood that a bin store and decking area have been installed within the garden of the property. However, the applicant has confirmed that the bin store is a moveable structure and the decking area is not a permanent structure and is removed and stored elsewhere within the site when not in use. Accordingly, these elements do not require the benefit of planning permission.

## **DEVELOPMENT PLAN**

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved National Planning Framework 4 (NPF4) which was adopted by The Scottish Government on the 13th February 2023 and the adopted East Lothian Local Development Plan 2018.

The relevant policies contained within the National Planning Framework 4 are Policies 7 (Historic assets and places), 14 (Design, quality and place) and 16 (Quality Homes). Policies CH5 (Battlefields), DP2 (Design) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination

of the application.

## **REPRESENTATIONS**

Two letters of objection have been submitted from the same objector in respect of the application. The main grounds of objections include:

- o Inaccuracies in the submitted drawings which fail to show the communal access path and gate to adjacent garden;
- o The communal access path to the neighbouring garden being constantly blocked up by the applicant.

The matter of the inconsistencies of the drawings was raised with the applicant. He maintains that the path that the objector refers to as a communal path is not a communal path and that the objector has no right of access over it to enter this garden – being the garden of 70 Whitecraig Road. However, East Lothian Council Housing Service who are the landlords of the applicant's property have confirmed that the path is a communal path and should be retained as such to allow the occupants of 70 Whitecraig Road continued access to their rear garden without having to leave the property and use the public road to do so.

The matter of the communal path being constantly blocked is not a matter relevant to the determination of this planning application.

## **PLANNING ASSESSMENT**

The sheds and greenhouse structures, fencing and gate that have been erected within the rear garden are visible from the public road to the northeast of the property. These are of a modest design to reflect their domestic purpose and are of a form, size and scale reflective of other outbuildings and fencing typically seen in rear gardens throughout the area. In this locational circumstance and by virtue of their architectural form, size, scale, materials and positioning the sheds and greenhouse structures, fencing and gate that have already been erected are appropriate to their setting and are not out of keeping with their surroundings. They are not harmful to the character and appearance of this part of Whitecraig. They are not an overdevelopment of the garden of the property.

The sheds and greenhouse structures and fencing also do not detrimentally impact on the character or appearance of the Battle of Pinkie Historic Battlefield.

With regards to neighbouring amenity, in assessing whether or not the development results in overlooking and loss of privacy to other residential properties it is the practice of the Council as planning authority to apply the general rule of a 9 metre separation between the windows on the proposed house and the garden boundary of neighbouring residential properties and an 18m separation between directly facing windows, if they are not adequately screened.

In this regard, while glazed opening feature within the elevations of the sheds and greenhouse structures, the garden of the applicant is completely enclosed on all boundaries fencing that is at least some 1.8m in height. Accordingly, this mitigates against the loss of amenity by way of overlooking to all surrounding properties.

"Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair gives guidance on the impact of a proposed development on the daylight and sunlight received by neighbouring properties.

In this instance given the siting and orientation of the outbuildings and fence and their modest scale, they do not result in the loss of sunlight or daylight to any neighbouring residential properties.

The Council's **Senior Environmental Protection Officer** has been consulted on the application. They have responded to confirm that they have no comments to make on the application. Accordingly no objection has been raised.

The Council's **Road Services** have been consulted on the application. They have responded to confirm that they have no objection to the proposal.

On these considerations, the sheds, greenhouse and fences that have been erected are consistent with Policies 7 (Historic assets and places), 14 (Design, quality and place) and 16 (Quality Homes) of NPF4 and Policies CH5 (Battlefields), DP2 (Design) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.

The applicant proposes to remove the existing 1.8m high timber gate that is located at the end of the communal path to the northeast of the applicant's garden and to replace it with a section of 1.9m high close boarded fence.

The gate proposed for removal gives the occupants of 70 Whitecraig Road access to their rear garden via the communal path between the northeast side of the applicant's rear garden and the lower metal railings that bounds the public road.

The applicant disputes that the path is a communal path and therefore intends to replace that timber gate with a fence. Such replacement of the gate would prevent the occupants of 70 Whitecraig Road from entering their rear garden from the communal path. If the gate was to be removed access to the garden of 70 Whitecraig Road would be from the public roads, via the existing vehicular access gates that are in the metal railings that enclose the road side boundary of the rear gardens.

East Lothian Council Housing Service are the landlords of the applicant's property. The **Service Manager Community Housing and Homelessness** has advised that the path in dispute is a communal path and that the gate should be retained to allow the occupants of 70 Whitecraig Road continued access to their rear garden without having to leave the property and use the public road.

Therefore to safeguard the residential amenity of the occupants of 70 Whitecraig Road and to ensure continued access to their rear garden without having to use the public road, it shall be made a condition of any grant of planning permission for the sheds, greenhouse, fences and gate that have already been erected, that the replacement of the gate at the end of the communal path between the applicant's garden and the garden of 70 Whitecraig Road with a section of fence be refused planning permission.

Subject to the imposition of that planning control the other components of this application - the sheds, greenhouse, fences and gate - that have already been erected are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh their accordance with the Development Plan.

**CONDITION:**

- 1 Planning permission is not granted for the replacement of the existing timber gate at the northwest end of the communal path, between the applicant's garden and the garden of no. 70 Whitecraig Road, with a section of fence.

Reason for Refusal:

To safeguard the residential amenity of the occupants of no. 70 Whitecraig Road and to ensure continued access to their rear garden without having to use the public road.

