

LOCAL REVIEW BODY

29th February 2024

Application No: 23/00864/P

**17 and 29 Pithead Heights, Dolphingstone,
Prestonpans EH32 9FW**

Appointed Officer's Submission

23/00864/P – REVIEW AGAINST DECISION – PLANNING OFFICER’S SUBMISSION

Planning application review against decision (refusal): Change of use of public open space to domestic garden ground (Retrospective) at 17 And 29 Pithead Heights, Prestonpans.

INDEX OF CONTENTS

1. Statement of Case: Officer’s report for planning application 23/00864/P.
2. Copy of stamped refused drawings relating to planning application 23/00864/P.
3. Copy of Decision Notice (including reason for refusal) relating to planning application 23/00864/P
4. Letters of objection to the application
5. Copy of Policy 14 (Design, Quality and Place) of National Planning Framework 4 and Policies OS2 (Change of Use to Garden Ground) and DP2 (Design) of the adopted East Lothian Local Development Plan 2018.

OFFICER REPORT

10th October 2023

App No. **23/00864/P**

Application registered on **28th August 2023**
Target Date **27th October 2023**

Proposal	Change of use of public open space to domestic garden ground (Retrospective)	SDELL	Y
		CDEL	N
Location	17 And 29 Pithead Heights Dolphingstone Prestonpans East Lothian EH32 9FW	Bad Neighbour Development	N

APPLICANT: **Miss Susan Ralston**

Is this application to be approved as a departure from structure/local plan? N

**29 Pithead Heights
Prestonpans
EH32 9FW**

DECISION TYPE:

Application Refused

REPORT OF HANDLING

PROPOSAL

This application relates 2 small areas of formerly landscaped open space adjacent to the rear gardens of the properties of 17 and 29 Pithead Heights. They are located within a predominately residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The 2 areas of landscaped openspace are between the fences enclosing the rear gardens of the houses and the adjacent access road for the development. The two areas were formerly part of the landscaping of part of a wider landscape and drainage area of the whole development site.

Planning permission is sought retrospectively for:

- (i) the change of use of the 2 areas of landscaped public open space to be incorporated as additional garden ground for those properties on which to store bins; and
- (ii) the erection of a timber clad bin store onto each of the areas of openspace.

The bin store adjacent to 17 Pithead Heights measures some 1.4-metre in height, 1.8m in length and 0.8m in depth. The bin store adjacent to 29 Pithead Heights, measures some 1.5m in height, 1.6m in length and 0.8m in depth. It has a green roof.

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 policy contained within NPF4 consist of policy 14 (Design, Quality and Place). Policies OS2 (Change of use to Garden Ground) and DP2 (Design) of the ELLDP are relevant to the determination of the application.

REPRESENTATIONS

A single objection has been received in relation to this application. The main grounds of objection are:

- Communal/shared open space with landscape planting throughout.
- Cost of maintenance is paid by all residents through a factor.
- Units are not visually attractive and takes away from the appearance of the street.
- Allowing people to erect will set an unwanted precedent for the street with already a number of unauthorised erections and changes of uses and combined would look awful.
- Removal of plans and shrubs.
- Do not understand how anyone can extend garden using land they do not own.
- A small number of houses were consulted, whereas all houses on the estate should be consulted.

All planning matters are assessed within the assessment of this application, non-planning matters are addressed where applicable below.

In terms of the cost/money paid to factor to maintain, this is not a planning matter and is not a material consideration in the determination of this planning application.

Land ownership is not a planning matter and thus, not considered as part of this application.

In relation to the above representation relating to consultations to neighbours, East Lothian Council as Planning Authority only consult neighbours within a 20m radius of the application site, in this case of both sites.

PLANNING ASSESSMENT

The change of use of the areas of landscaped open space and the erection of the bin stores does not harm the residential amenity of any neighbouring residential properties.

Policy OS2 of the adopted East Lothian Local Development Plan states that the change of use of open space to garden ground will be supported if it would not result in unacceptable loss of visual or recreational amenity or harm the integrity of a landscaping scheme, or set a precedent that if followed would do so.

The change of use of the areas of landscaped open space has been to facilitate the formation of hardsurfaced bin stores on those areas of land. Whilst the existing timber fence and gate between the areas of landscaped open space and the rear garden of the applicant's house have been retained, those areas are used to store the bins as alternatives to the bins being stored within the rear gardens of the applicant's properties.

The applicant's properties and the small areas of landscaping comprising the application site are part of a recently built housing development. The landscaped areas of openspace are part of the wider landscaping across the development and form part of the drainage of the wider development site. These areas of landscaped open space were provided to soften the impact of, and therefore to enhance, the visual amenity of the development. The change of use of the small areas of open space and the formation of hardsurfaced bin stores on them, individually and cumulatively undermines the integrity of the scheme of landscaping implemented within the development and harms the character and the visual amenity of the larger residential development. By being located outwith the gardens of the properties the formation of the bin storage areas and the erection of bin stores on them is inappropriate to their setting. They are therefore harmful to the character and visual amenity of this part of the residential area and would if approved set a harmful precedent that would result in visual harm that would further harm the integrity of the landscaped open space.

The change of use of the landscaped areas of open space and the retention of the bin stores on them by being harmful to the character and visual amenity of this part of the residential area are contrary to Policy 14 of the NPF4 and Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018.

It is noted that there are other areas of landscaped openspace that have undergone an unauthorised change of use and have erected a bin store of similar on them, or have removed the intended landscaping and placed slab work down to place bins on them. No planning application for these other areas at Pit Head heights has been received and therefore these remain unauthorised and do not form a precedent or material consideration relevant to the determination of this planning application.

The proposals do not accord with the development plan and there are no material considerations that outweigh their discordance with the development plan.

The change of use and erection of bin stores and their associated base at 17 and 29 Pithead Heights are unauthorised and a breach of planning control. The timber bin stores and associated slab base shall be removed and the area returned to its former landscaped form within 2 months of the date of this decision. Should this action not be taken then enforcement action will be taken to secure their removal with the period for compliance with the enforcement notice being 2 months.

REASON FOR REFUSAL:

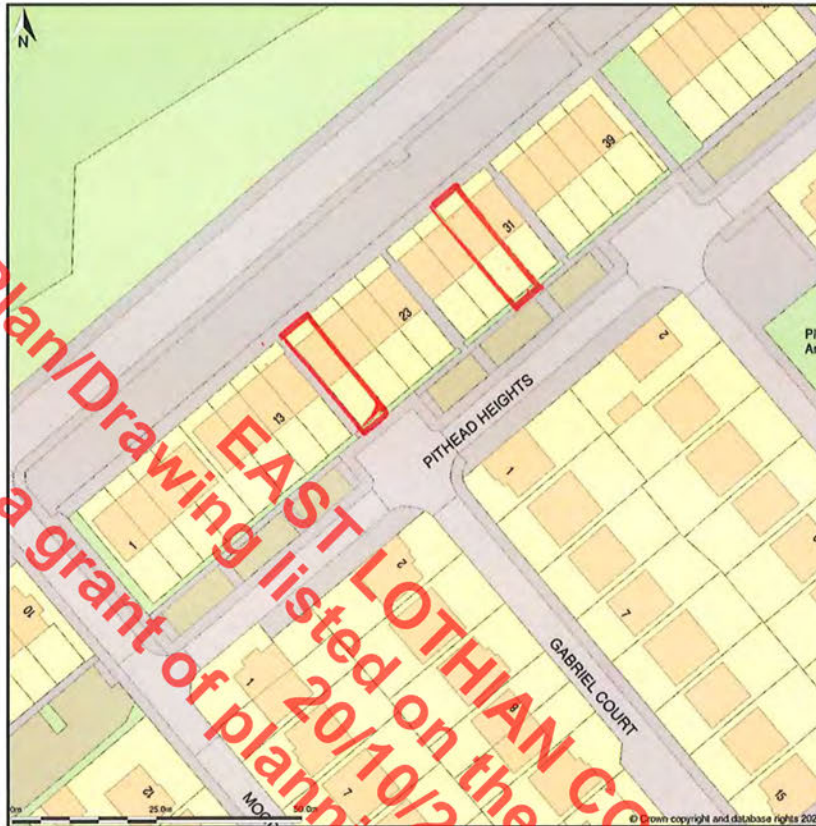
- 1 The loss of the area of landscaped open space and the erection of the bin stores is harmful to the character, appearance and visual amenity of this part of the residential area and would if approved set a harmful precedent that would result in visual harm that would further harm the integrity of the landscaped amenity open space. For this reason the change of use of the area, bin store and slab base are contrary to Policy 14 of NPF4 and Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018.

LETTERS FROM



10th October 2023

17, 29, Pithead Heights, Dolphingstone, Prestonpans, East Lothian, EH32 9FW



Location Plan shows area bounded by: 337712.15, 673126.18 337853.57, 673267.6 (at a scale of 1:1250), OSGridRef: NT37767319. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 7th Aug 2023 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2023. Supplied by www.buyaplan.co.uk a licensed Ordnance Survey partner (100053143). Unique plan reference: #00839290-8E4299.

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. Buy A Plan® logo, pdf design and the www.buyaplan.co.uk website are Copyright © Passinc Ltd 2023.

Plan/Drawing listed on the Decision Notice of 20/10/2023 refusing a grant of planning permission 23/00864/P

29, Pithead Heights, Dolphingstone, Prestonpans, East Lothian, EH32 9FW



Site Plan (also called a Block Plan) shows area bounded by: 337775.49, 673203.09 337811.49, 673239.09 (at a scale of 1:200), OSGridRef: NT37797322. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 7th Aug 2023 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2023. Supplied by www.buyaplan.co.uk a licensed Ordnance Survey partner (100053143). Unique plan reference: #00839292-0C5A09.

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. Buy A Plan® logo, pdf design and the www.buyaplan.co.uk website are Copyright © Passinc Ltd 2023.

Highlighted area - change of usage.
Hatched area - bin store area plus hard standing / slabs.

17, Pithead Heights, Dolphingstone, Prestonpans, East Lothian, EH32 9FW



Site Plan (also called a Block Plan) shows area bounded by: 337755.02, 673186.99 337791.02, 673222.99 (at a scale of 1:200), OSGridRef: NT3777320. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 7th Aug 2023 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2023. Supplied by www.buyaplan.co.uk a licensed Ordnance Survey partner (100053143). Unique plan reference: #00839293-D46387.

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. Buy A Plan® logo, pdf design and the www.buyaplan.co.uk website are Copyright © Passinc Ltd 2023.

Highlighted area - change of usage
 Hatched area - bin store area plus
 hard standing / slabs

17, Pithead Heights, Dolphingstone, Prestonpans, East Lothian, EH32 9FW



Site Plan (also called a Block Plan) shows area bounded by: 337755.02, 673186.99 337791.02, 673222.99 (at a scale of 1:200), OSGridRef: NT3777320. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 7th Aug 2023 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2023. Supplied by www.buyaplan.co.uk a licensed Ordnance Survey partner (100053143). Unique plan reference: #00839293-D46387.

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. Buy A Plan® logo, pdf design and the www.buyaplan.co.uk website are Copyright © Passinc Ltd 2023.

Highlighted area - change of usage
 Hatched area - bin store area plus
 hard standing / slabs

29, Pithead Heights, Dolphingstone, Prestonpans, East Lothian, EH32 9FW



Site Plan (also called a Block Plan) shows area bounded by: 337775.49, 673203.09 337811.49, 673239.09 (at a scale of 1:200), OSGridRef: NT37797322. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 7th Aug 2023 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2023. Supplied by www.buyaplan.co.uk a licensed Ordnance Survey partner (100053143). Unique plan reference: #00839292-0C5A09.

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. Buy A Plan® logo, pdf design and the www.buyaplan.co.uk website are Copyright © Passinc Ltd 2023.

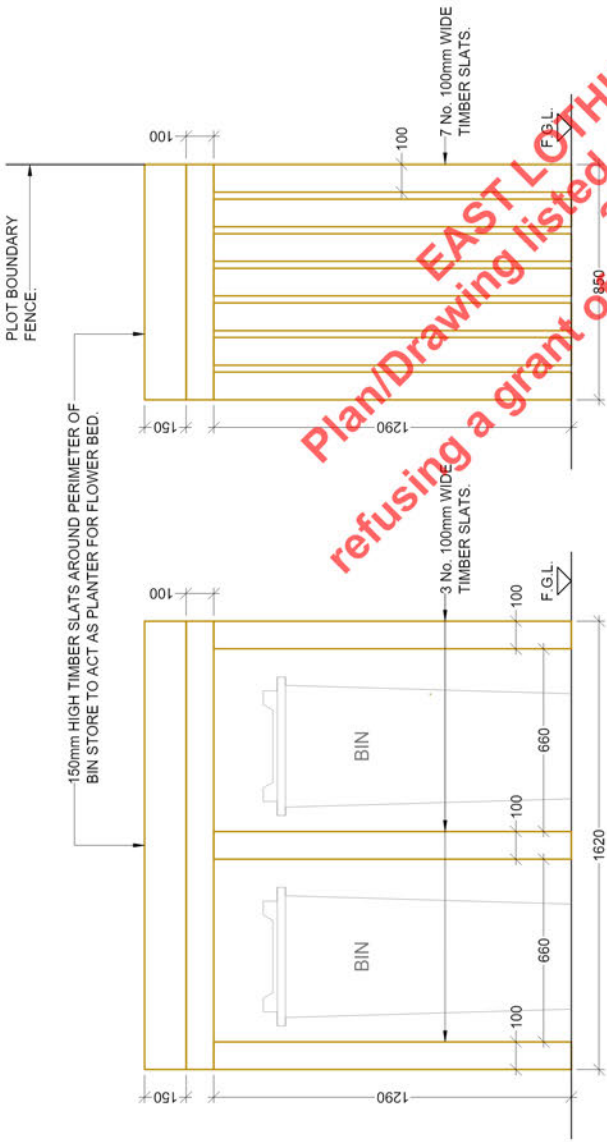
Highlighted area - change of usage.
Hatched area - bin store area plus hard standing / slabs.



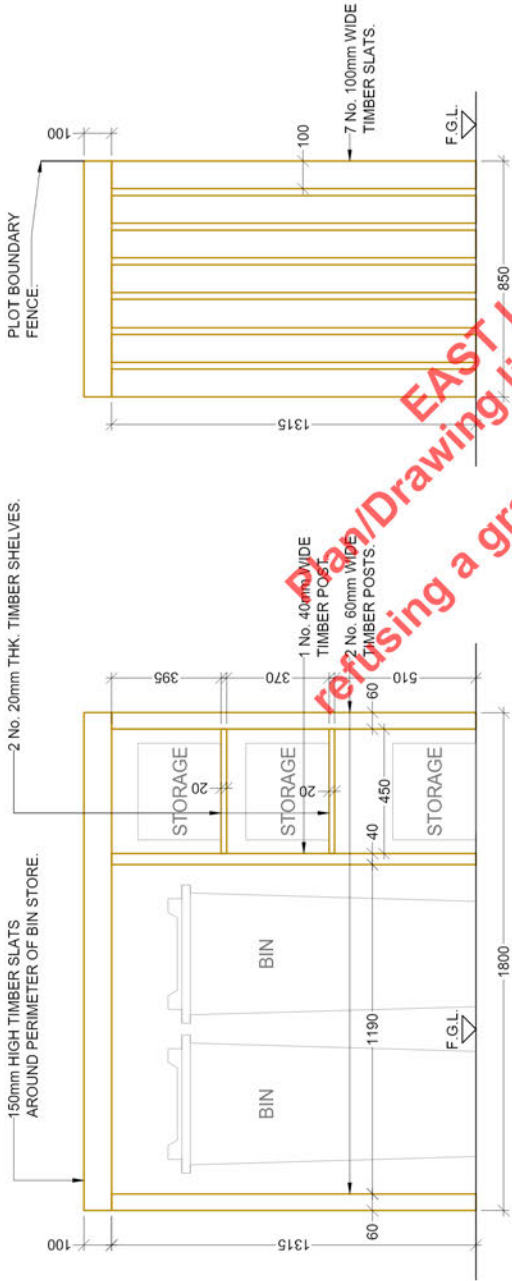
EAST LOTHIAN COUNCIL
Plan/Drawing listed on the Decision Notice of
refusing a grant of planning permission 23/00864/P
20/10/2023



EAST LOTHIAN COUNCIL
refusing a grant of planning permission 23/00864/P
Plan/Drawing listed on the Decision Notice of
20/10/2023



EAST LOTHIAN COUNCIL
 Plan/Drawing listed on the Decision Notice of
 20/10/2023
 refusing a grant of planning permission 23/00864/P



Refusing a grant of planning permission 23/00864/P
EAST LOTHIAN COUNCIL
 Drawing list on the Decision Notice of 20/10/2023

App No. 23/00864/P

**EAST LoTHIAN COUNCIL
DECISION NOTICE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING
(DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**Miss Susan Ralston
29 Pithead Heights
Prestonpans
EH32 9FW**

APPLICANT: Miss Susan Ralston

With reference to your application registered on 28th August 2023 for planning permission under the above mentioned Acts and Regulations for the following development, viz:-

Change of use of public open space to domestic garden ground (Retrospective)

at

**17 And 29 Pithead Heights
Dolphingstone
Prestonpans
East Lothian**

East Lothian Council as the Planning Authority in exercise of their powers under the above-mentioned Acts and Regulations hereby **REFUSE PLANNING PERMISSION** for the said development.

The reasons for the Council's refusal of planning permission are:-

- 1 The loss of the area of landscaped open space and the erection of the bin stores is harmful to the character, appearance and visual amenity of this part of the residential area and would if approved set a harmful precedent that would result in visual harm that would further harm the integrity of the landscaped amenity open space. For this reason the change of use of the area, bin store and slab base are contrary to Policy 14 of NPF4 and Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018.

The report on this application is attached to this Decision Notice and its terms shall be deemed to be incorporated in full in this Decision Notice.

Details of the following are given in the application report:

- the terms on which the Planning Authority based this decision;
- details of any variations made to the application in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997.

The plans to which this decision relate are as follows:

<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
DWG 01	-	27.07.2023
DWG 02	-	27.07.2023
DWG 03	-	08.08.2023
DWG 04	-	08.08.2023
DWG 05	-	08.08.2023
PHOTO 01	-	08.08.2023
PHOTO 02	-	08.08.2023
DWG 06	-	08.08.2023

20th October 2023



Keith Dingwall
Service Manager - Planning

NOTES

If the applicant is aggrieved by the decision to refuse permission for the proposed development, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the Clerk to the Local Review Body, Committee Team, Communications and Democratic Services, John Muir House, Haddington, East Lothian EH41 3HA.

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the Planning Authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Comment Details

Commenter Type: [REDACTED]

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The land being used is communal ground. Which had shrubs or flowers planted there. The cost of these plants will have been part of our factor fees and paid for by all the residents.

The units are also not visually nice to look at for anyone and takes away from the overall appearance of the street.

Plus allowing people to put structures on land that they don't own, will set a precedent for the street. There are a number of similar houses on the long street and if everyone followed it would look awful. Plus repeating the removal of plants and shrubs.

I don't understand how anyone can effectively extend their garden by using land they don't own.

Comment Details

Commenter Type: [REDACTED]

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: To add to my original objection, a small number of houses are on the neighbour list. All the houses on the estate should have been consulted.

National Planning Framework 4

Policy 14 (Design, Quality and Place)

a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.

b) Development proposals will be supported where they are consistent with the six qualities of successful places

Healthy: Supporting the prioritisation of women's safety and improving physical and mental health.

Pleasant: Supporting attractive natural and built spaces.

Connected: Supporting well connected networks that make moving around easy and reduce car dependency

Distinctive: Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.

Sustainable: Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions.

Adaptable: Supporting commitment to investing in the long-term value of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time.

Further details on delivering the six qualities of successful places are set out in Annex D.

c) Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported.

Adopted East Lothian Local Development Plan 2018

Policy OS2 (Change of Use to Garden Ground)

Provided other policies of the plan are met, change of use of public open space to garden ground will be supported if it would not result in unacceptable loss of visual or recreational amenity or harm the integrity of a landscaping scheme, or set a precedent that if followed would do so. In the case of a change of use of an area of countryside to garden ground any well-defined settlement boundary or landscaped edge must not be prejudiced. In all cases the area of the change of use must be small in scale and must not harm the character or appearance of the surrounding area

Policy DP2 (Design)

The design of all new development, with the exception of changes of use and alterations and extensions to existing buildings, must:

1. Be appropriate to its location in terms of its positioning, size, form, massing, proportion and scale and use of a limited palette of materials and colours that complement its surroundings;
2. By its siting, density and design create a coherent structure of streets, public spaces and buildings that respect and complement the site's context, and create a sense of identity within the development;
3. Position and orientate buildings to articulate, overlook, properly enclose and provide active frontages to public spaces or, where this is not possible, have appropriate high quality architectural or landscape treatment to create a sense of welcome, safety and security;
4. Provide a well connected network of paths and roads within the site that are direct and will connect with existing networks, including green networks, in the wider area ensuring access for all in the community, favouring, where appropriate, active travel and public transport then cars as forms of movement;
5. Clearly distinguish public space from private space using appropriate boundary treatments;
6. Ensure privacy and amenity, with particular regard to levels of sunlight, daylight and overlooking, including for the occupants of neighbouring properties;
7. Retain physical or natural features that are important to the amenity of the area or provide adequate replacements where appropriate;
8. Be able to be suitably serviced and accessed with no significant traffic or other environmental impacts.