

# Public Document Pack



To: Councillor Milne, Convener and Councillors Dickson and Donnelly.

Town House,  
ABERDEEN 19 April 2016

## **LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL**

The Members of the **LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL** are requested to meet in Committee Room 4 - Town House on **TUESDAY, 26 APRIL 2016 at 11.30 am.**

FRASER BELL  
HEAD OF LEGAL AND DEMOCRATIC SERVICES

### **B U S I N E S S**

- 1 Procedure Notice (Pages 5 - 6)

**COPIES OF THE RELEVANT PLANS / DRAWINGS ARE AVAILABLE FOR INSPECTION IN ADVANCE OF THE MEETING AND WILL BE DISPLAYED AT THE MEETING**

**TO REVIEW THE DECISION OF THE APPOINTED OFFICER TO REFUSE THE FOLLOWING APPLICATIONS**

### **PLANNING ADVISER - ANDREW MILLER**

- 2 7 King's Gate Aberdeen - erection of tree house to rear of existing dwelling (retrospective) - 151391
- 3 Delegated Report, Plans, Decision Notice and Letters of Objection (Pages 7 - 20)  
Members, please access all relevant plans at the following link:-  
<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref=151391>
- 4 Planning policies referred to in documents submitted - all policies available at the following link

Scottish Planning Policy  
Scottish Historic Environment Policy  
Policy D1 – Architecture and Placemaking  
Policy D5 – Built Heritage  
Policy H1 – Residential Areas  
Supplementary Guidance – Householder Development Guide

Proposed Aberdeen Local Development Plan

D1 – Quality Placemaking by Design  
D4 – Historic Environment  
H1 – Residential Areas

[http://www.aberdeencity.gov.uk/planning\\_environment/planning/local\\_development\\_plan/pla\\_local\\_development\\_plan.asp](http://www.aberdeencity.gov.uk/planning_environment/planning/local_development_plan/pla_local_development_plan.asp)

5 Notice of Review with supporting information submitted by applicant / agent  
(Pages 21 - 26)

6 Determination - Reasons for decision

Members, please note that reasons should be based against Development Plan policies and any other material considerations.

7 Consideration of conditions to be attached to the application - if Members are minded to over-turn the decision of the case officer

**PLANNING ADVISER - ROBERT FORBES**

8 Brookfield, Land at Murtle Den Road, Milltimber - Demolition of existing dwellinghouse and erection of 3 dwellinghouses - 151376

9 Delegated Report, Plans, Decision Notice and and Letters of Objection (Pages 27 - 68)

Members, please access all relevant plans at the following link:-

<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref=151376>

10 Planning policies referred to in documents submitted - all policies available at the following link

### **Aberdeen Local Development Plan**

Policy NE1 – Green Space Network  
Policy NE2 – Green Belt  
Policy D1 – Architecture and Placemaking  
Policy D2 – Design and Amenity  
Policy NE5 – Trees and Woodland  
Policy NE6 – Flooding and Drainage  
Policy NE8 – Natural Heritage

### **Proposed Local Development Plan**

D1 – Quality Placemaking by Design  
D2 - Landscape  
I1 – Infrastructure Delivery and Planning Obligations  
T2 – Managing the Transport Impact of Development  
T3 – Sustainable and Active Travel  
NE1 – Green Space Network  
NE2 – Green Belt  
NE5 – Trees and Woodland  
NE6 – Flooding, Drainage and Water Quality  
NE8 – Natural Heritage  
R7 – Low and Zero Carbon Buildings and Water Efficiency

### **Supplementary Guidance**

Subdivision and Redevelopment of Residential Curtilages

[http://www.aberdeencity.gov.uk/planning\\_environment/planning/local\\_development\\_plan/pla\\_local\\_development\\_plan.asp](http://www.aberdeencity.gov.uk/planning_environment/planning/local_development_plan/pla_local_development_plan.asp)

- 11 Notice of Review with supporting information submitted by applicant / agent  
(Pages 69 - 78)
- 12 Determination - Reasons for decision
- 13 Consideration of conditions to be attached to the application - if Members are minded to over-turn the decision of the case officer

Website Address: [www.aberdeencity.gov.uk](http://www.aberdeencity.gov.uk)

Should you require any further information about this agenda, please contact Lynsey McBain on [lymcbain@aberdeencity.gov.uk](mailto:lymcbain@aberdeencity.gov.uk) / tel 01224 522123

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## LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

### PROCEDURE NOTE

#### GENERAL

1. The Local Review Body of Aberdeen City Council (the LRB) must at all times comply with (one) the provisions of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (the regulations), and (two) Aberdeen City Council's Standing Orders.
2. In dealing with a request for the review of a decision made by an appointed officer under the Scheme of Delegation adopted by the Council for the determination of "local" planning applications, the LRB acknowledge that the review process as set out in the regulations, shall be carried out in stages.
3. As the first stage and having considered the applicant's stated preference (if any) for the procedure to be followed, the LRB must decide how the case under review is to be determined.
4. Where the LRB consider that the review documents (as defined within the regulations) provide sufficient information to enable them to determine the review, they may (as the next stage in the process) proceed to do so without further procedure.
5. Should the LRB, however, consider that they are not in a position to determine the review without further procedure, they must then decide which one of (or combination of) the further procedures available to them in terms of the regulations should be pursued. The further procedures available are:-
  - (a) written submissions;
  - (b) the holding of one or more hearing sessions;
  - (c) an inspection of the site.
6. If the LRB do decide to seek further information or representations prior to the determination of the review, they will require, in addition to deciding the manner in which that further information/representations should be provided, to be specific about the nature of the information/representations sought and by whom it should be provided.
7. In adjourning a meeting to such date and time as it may then or later decide, the LRB shall take into account the procedures outlined within Part 4 of the regulations, which will require to be fully observed.

#### DETERMINATION OF REVIEW

8. Once in possession of all information and/or representations considered necessary to the case before them, the LRB will proceed to determine the review.

9. The starting point for the determination of the review by the LRB will be Section 25 of the Town and Country Planning (Scotland) Act 1997, which provides that:-

“where, in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise.”
10. In coming to a decision on the review before them, the LRB will require:-
  - (a) to consider the Development Plan position relating to the application proposal and reach a view as to whether the proposal accords with the Development Plan;
  - (b) to identify all other material considerations arising (if any) which may be relevant to the proposal;
  - (c) to weigh the Development Plan position against the other material considerations arising before deciding whether the Development Plan should or should not prevail in the circumstances.
11. In determining the review, the LRB will:-
  - (a) uphold the appointed officers determination, with or without amendments or additions to the reason for refusal; or
  - (b) overturn the appointed officer's decision and approve the application with or without appropriate conditions.
12. The LRB will give clear reasons for its decision in recognition that these will require to be intimated and publicised in full accordance with the regulations.

# Agenda Item 3

Signed (authorised Officer(s)):

7 KING'S GATE, ABERDEEN

ERECTION OF TREE HOUSE TO REAR OF EXISTING DWELLING (RETROSPECTIVE).

For: Mr Drummond Lawson

Application Type : Detailed Planning Permission

Application Ref. : P151391

Application Date : 09/09/2015

Advert : Section 60/65 - Dev aff LB/CA

Advertised on : 16/09/2015

Officer : Ross McMahon

Creation Date : 3 December 2015

Ward: Hazlehead/Ashley/Queens Cross(M Greig/J Stewart/R Thomson/J Corall)

Community Council: No response received

## **RECOMMENDATION:**

**Refuse**

## **DESCRIPTION**

The application site, located on the south side of King's Gate, extends to 511sq.m and is occupied by a Category 'B' listed traditional two-and-a-half storey semi-detached dwelling house, of slate and granite construction, set within an established residential area. The rear garden is located to the south of the property and sits adjacent to a side lane linking King's Gate with Hamilton Place, to the south. The site slopes down gently from King's Gate to the rear (south) of the site and is demarcated by a c. 1.5m high stone wall to all rear boundaries of the site, in addition to trees and small hedges. The site is located within the Albyn Place/Rubislaw Conservation Area and lies within a Residential Area, as identified in the adopted Aberdeen Local Development Plan 2012.

## **RELEVANT HISTORY**

None.

## **PROPOSAL**

Retrospective planning permission is sought for the erection of an elevated wooden structure, referred to as a 'tree house', and an associated area of decking to the south-east of the site. The overall height of the erected structure

measures approx. 4.8m from ground level, and approx. 2.5m to the timber deck, forming a large timber lined screen which sits on the existing granite boundary wall and measures 4.5m in overall height, with an overall width of 6.7m along the east boundary facing onto the side lane.

The structure is constructed primarily in timber, with stained timber linings/cladding used to form screening to the side lane.

### **Supporting Documents**

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at -

<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref.=151391>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

### **CONSULTATIONS**

**Roads Development Management** – No observations.

**Environmental Health** – No observations.

**Communities, Housing and Infrastructure (Flooding)** – No observations.

**Community Council** – No comments received.

### **REPRESENTATIONS**

Two letters of representation have been received in connection with the application. The points raised relate to the following matters –

1. The east wall should be stained/treated in its entirety;
2. The proposal is out of character with the area and adversely affects the privacy of adjacent properties;
3. The application would set a precedent for similar types of development.

### **PLANNING POLICY**

#### **National Policy and Guidance**

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#### **Scottish Planning Policy (SPP)**

Paragraph 141 – Listed Buildings: The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the character and appearance of the building and setting.

Paragraph 143 – Conservation Areas: Proposals for development within conservation areas and proposals out with which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character or appearance.



## **Scottish Historic Environment Policy (SHEP)**

Development should not adversely affect the special interest and character of Listed Buildings and Conservation Areas.

- **Historic Environment Scotland’s ‘Managing Change in the Historic Environment – Setting’**

The setting of a historic asset can incorporate a range of factors, not all of which will apply to every case: current landscape or townscape context; visual envelope, incorporating views to, from and across the historic asset or place; key vistas, framed by rows of trees, buildings or natural features that give an asset or place a context, whether intentional or not; the prominence of the historic asset or place in views throughout the surrounding area; character of the surrounding landscape; general and specific views including foregrounds and backdrops; relationships between both built and natural features; aesthetic qualities; other non-visual factors such as historical, artistic, literary, linguistic, or scenic associations, intellectual relationships (e.g. to a theory, plan or design), or sensory factors; a ‘Sense of Place’, the overall effect formed by the above factors.

## **Aberdeen Local Development Plan**

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### **Policy D1 – Architecture and Placemaking**

To ensure high standards of design, new development must be designed with due consideration for its context and make a positive contribution to its setting. Factors such as siting, scale, massing, colour, materials, orientation, details, the proportions of building elements, together with the spaces around buildings, including streets, squares, open space, landscaping and boundary treatments, will be considered in assessing that contribution.

### **Policy D5 – Built Heritage**

Proposals affecting Conservation Areas or Listed Buildings will only be permitted if they comply with Scottish Planning Policy.

### **Policy H1 – Residential Areas**

Within existing residential areas (H1 on the Proposals Map) and within new residential developments, proposals for new residential development and householder development will be approved in principle if it:

1. does not constitute overdevelopment;
2. does not have an unacceptable impact on the character or amenity of the surrounding area; and
3. complies with Supplementary Guidance contained in the Householder Development Guide.

### **Supplementary Guidance**

Householder Development Guide

## **Proposed Aberdeen Local Development Plan**

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The following policies substantively reiterate policies in the adopted local development plan as summarised above:

**D1 – Quality Placemaking by Design** (*D1 – Architecture and Placemaking in adopted LDP*);

**D4 – Historic Environment** (*D5 – Built Heritage in adopted LDP*);

**H1 – Residential Areas** (*H1 – Residential Areas in adopted LDP*);

### **EVALUATION**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, regard is to be had to the provisions of the development plan and that determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to preserve and enhance the character or appearance of conservation areas.

The proposal would result in a nominal increase in site coverage which is considered to be acceptable within the context of the surrounding area. It is therefore not considered that the erected structure constitutes overdevelopment of the site.

However, notwithstanding the above, the development is considered to be contrary to Policy D1 (Architecture & Placemaking), the Council's Supplementary Guidance: Householder Development Guide, and therefore H1 (Residential Areas), D5 (Built Heritage) and therefore SHEP, Historic Environment Scotland's '*Managing Change in the Historic Environment – Setting*' and SPP for the following reasons:

1. The visual impact of the erected structure is considered to have a negative impact on the character of the surrounding area, the Albyn Place/Rubislaw Conservation Area and the setting of the Category 'B' listed dwelling by virtue of its overall height, size, scale and prominence to the side lane, and constitutes a particularly overbearing and alien feature within the streetscape and wider area generally, to the detriment of the character and appearance of the wider Albyn Place/Rubislaw Conservation Area.

2. The overall platform height of the erected tree house offers views into the private rear garden ground and habitable room windows of properties to the west of the development site, contrary to the Council's Supplementary Guidance: Householder Development Guide, and therefore policy H1 (Residential Areas) of the Aberdeen Local Development Plan.

### Proposed Aberdeen Local Development Plan

The Proposed ALDP was approved for submission for Examination by Scottish Ministers at the meeting of the Communities, Housing and Infrastructure Committee of 27 October 2015. It constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to representation and are regarded as unresolved issues to be determined at the Examination; and
- the relevance of these matters to the application under consideration.

Policies and proposals which have not been subject to objection will not be considered at Examination. In such instances, they are likely to be carried forward for adoption. Such cases can be regarded as having greater material weight than those issues subject to Examination. The foregoing can only be assessed on a case by case basis. In relation to this particular application, proposed policies D1 (Quality Placemaking by Design), D4 (Historic Environment) and H1 (Residential Areas) substantively reiterate policies, D1 (Architecture and Placemaking), D5 (Built Heritage) and H1 (Residential Areas) of the adopted Aberdeen Local Development Plan and therefore raise no additional material considerations.

### Matters Raised in Representations

All matters raised in representations in respect of loss of amenity, appearance, impact on the character of the surrounding area, have been addressed in the evaluation section of this report. Full regard has been given to all concerns raised in representations, but neither do they outweigh the policy position as detailed above, nor do they justify refusal of the application.

### Conclusion

To summarise, while the overall footprint of the erected tree house is considered to be acceptable, the development fails to comply with the relevant policies found within the Aberdeen Local Development Plan 2012 in respect of design, size, scale in its location, its impact on the Albyn Place/Rubislaw Conservation Area and the setting of the category 'B' listed building, and additionally, borrows amenity from surrounding properties.

For the above reasons, the fails to comply with the relevant local policies contained within the adopted Aberdeen Local Development Plan 2012 and subsequently SHEP and SPP. On the basis of the above, and following on from the evaluation under policy and guidance, it is considered that there are no material planning considerations – including the Proposed Aberdeen Local Development Plan – that would warrant approval of the application.

## **RECOMMENDATION**

### **Refuse**

#### **REASONS FOR RECOMMENDATION**

The proposal would have a negative impact on the residential amenity of the locality and the Albyn Place/Rubislaw Conservation Area. The proposal fails to comply with the relevant policies of Aberdeen Local Development Plan 2012, namely Policies D1 (Architecture and Placemaking), D5 (Built Heritage), the Council's Supplementary Guidance: Householder Development Guide and therefore H1 (Residential Areas) of the Aberdeen Local Development Plan 2012 by virtue of its overall size, scale and prominence to the street and its impact on the setting of the Category 'B' listed building, as it does not preserve the character and amenity of the Albyn Place/Rubislaw Conservation Area in line with the principles of Historic Scotland's SHEP and the associated Managing Change in the Historic Environment - Setting. On the basis of the above, and following on from the evaluation under policy and guidance, it is considered that there are no material planning considerations – including the Proposed Aberdeen Local Development Plan – that would warrant approval of the application.



**PLANNING & SUSTAINABLE DEVELOPMENT**  
Communities, Housing and Infrastructure  
Business Hub 4, Marischal College, Broad Street,  
ABERDEEN. AB10 1AB

## **THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

### **Refusal of Planning Permission**

Mr Drummond Lawson  
7 Kings Gate  
Aberdeen

on behalf of **Mr Drummond Lawson**

With reference to your application validly received on 9 September 2015 for Planning Permission under the above mentioned Act for the following development, viz:-

**ERECTION OF TREE HOUSE TO REAR OF EXISTING DWELLING (RETROSPECTIVE).**  
**at 7 King's Gate, Aberdeen**

the Council in exercise of their powers under the above mentioned Act hereby REFUSE Planning Permission for the said development as specified in the application form and the plan(s) and documents docketed as relative thereto and numbered as follows:-

01, 02, 03, 04, 05.

The reasons on which the Council has based this decision are as follows:-

The proposal would have a negative impact on the residential amenity of the locality and the Albyn Place/Rubislaw Conservation Area. The Development Plan 2012, namely Policies D1 (Architecture and Placemaking), D5 (Built Heritage), the Council's Supplementary Guidance: Householder Development Guide and therefore H1 (Residential Areas) of the Aberdeen Local Development Plan 2012 by virtue of its overall size, scale and prominence to the street and its impact on the setting of the Category 'B' listed building, as it does not preserve the character and amenity of the Albyn Place/Rubislaw Conservation Area in line with the principles of Historic Scotland's SHEP and the associated Managing Change in the Historic Environment - Setting. On the basis of the above, and following on from the evaluation under policy and guidance, it is considered that there are no material planning considerations -

PETE LEONARD  
DIRECTOR

**Continuation**

including the Proposed Aberdeen Local Development Plan - that would warrant approval of the application.

The plans, drawings and documents that are the subject of this decision notice are numbered as follows:- 01, 02, 03, 04, 05.

**Date of Signing 4 December 2015**

A handwritten signature in black ink that reads "Daniel Lewis". The signature is written in a cursive, slightly slanted style.

**Daniel Lewis**  
Development Management Manager

Enc.

PETE LEONARD  
DIRECTOR

**NB. EXTREMELY IMPORTANT INFORMATION RELATED TO THIS REFUSAL OF PLANNING APPROVAL**

The applicant has the right to have the decision to refuse the application reviewed by the planning authority and further details are given in Form attached below.

Regulation 28(4)(a)

Form 1

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

*Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions*

1. If the applicant is aggrieved by the decision of the planning authority to –
  - a. refuse planning permission for the proposed development;
  - b. to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
  - c. to grant planning permission or approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A(8) of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. Any requests for a review must be made on a 'Notice of Review' form available from the planning authority or at <http://eplanning.scotland.gov.uk/>.

Notices of review submitted by post should be sent to –

Planning and Sustainable Development  
 Communities, Housing and Infrastructure  
 Aberdeen City Council  
 Business Hub 4  
 Ground Floor North  
 Marischal College  
 Broad Street  
 Aberdeen  
 AB10 1AB

2. 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 it's 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 owners 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.

PETE LEONARD  
 DIRECTOR

PETE LEONARD  
DIRECTOR



PI

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**From:** webmaster@aberdeencity.gov.uk  
**Sent:** 01 October 2015 07:31  
**To:** PI  
**Subject:** Planning Comment for 151391

Comment for Planning Application 151391

Name : G Smith

Address : 106 Hamilton Place  
Aberdeen

Telephone :

Email 

type :

Comment : The proposal in planning application 151391 is not in character with the area and adversely affects the privacy of adjacent properties. if approved it would set a precedent for this type of development in this and other areas which would not be acceptable. I therefore object to the application.

IMPORTANT NOTICE: This e-mail (including any attachment to it) is confidential, protected by copyright and may be privileged. The information contained in it should be used for its intended purposes only. If you receive this email in error, notify the sender by reply email, delete the received email and do not make use of, disclose or copy it. Whilst we take reasonable precautions to ensure that our emails are free from viruses, we cannot be responsible for any viruses transmitted with this email and recommend that you subject any incoming email to your own virus checking procedures. Unless related to Council business, the opinions expressed in this email are those of the sender and they do not necessarily constitute those of Aberdeen City Council. Unless we expressly say otherwise in this email or its attachments, neither this email nor its attachments create, form part of or vary any contractual or unilateral obligation. Aberdeen City Council's incoming and outgoing email is subject to regular monitoring.

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**George Milne**

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**From:** Charlie Fullerton [REDACTED]  
**Sent:** 21 September 2015 14:17  
**To:** PI  
**Subject:** Application Number 151391

Dear Sir/Madam,

I live in 95 Fountainhall Road and have a direct view onto the newly built tree house.

I have two points to raise a query to the current build for this retrospective planning permission:

- The treehouse has been built with new treated wood and stands out due the varnish/treatment that has been pre-applied to it, I am happy with the build but the East wall would have to be completely stained, treated to be more in keeping with the surrounds
- The tree that the tree house has been built around/through is a tall, unslightly tree with I am sure shallow roots (looking at the type of tree, not a broad leaf) and is more of an eye-sore and safety hazard at its current height. It would require approx 25-30ft cut from its height to reduce the sail affect for falling and also would have the added benefit for many porperties on Hamilton Place, Fountainall Road and Kings Gate of not being an eye-sore.

Thanks in advance and look forward to hearing from you

Regards

Charlie Fullerton  
95 Fountainhall Road  
[REDACTED]

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## NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.**

Use **BLOCK CAPITALS** if completing in manuscript

### Applicant(s)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

### Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

Mark this box to confirm all contact should be through this representative:

Yes  No

\* Do you agree to correspondence regarding your review being sent by e-mail?  Yes  No

Planning authority

Planning authority's application reference number

Site address

Description of proposed development

Date of application

Date of decision (if any)

**Note.** This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.



1. Application for planning permission (including householder application)
2. Application for planning permission in principle
3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
4. Application for approval of matters specified in conditions

**Reasons for seeking review**

1. Refusal of application by appointed officer
2. Failure by appointed officer to determine the application within the period allowed for determination of the application
3. Conditions imposed on consent by appointed officer

**Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

1. Further written submissions
2. One or more hearing sessions
3. Site inspection
4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

THE TREEHOUSE IS A CHILDREN'S PLAY STRUCTURE, NOT A RESIDENTIAL CONSTRUCTION. AS A RESULT IT IS USED AT MOST FOR A FEW HOURS A WEEK, OFTEN LESS. WE BELIEVE A HEARING WILL ALLOW THIS DISTINCTION, ITS CONSTRUCTION AND ANY OPTIONS FOR MODIFICATION, TO BE THOROUGHLY DISCUSSED AND REVIEWED PRIOR TO REACHING A DECISION ON THE APPEAL.

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | Yes                      | No                                  |
| 1. Can the site be viewed entirely from public land?                                 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

THE TREEHOUSE IS CONSTRUCTED IN THE REAR GARDEN OF 7 KINGS GATE, ABERDEEN. THE REAR GARDEN IS LOCKED AND WHILE IT IS POSSIBLE TO SEE THE TREEHOUSE FROM THE ROADSIDE, IT IS NOT POSSIBLE TO SEE IT FROM THE PERSPECTIVE THE MAJORITY OF NEIGHBOURS WOULD SEE IT FROM, AND MORE IMPORTANTLY, IT IS NOT POSSIBLE TO GET AN APPRECIATION OF THE SIGHTLINES FROM THE TREEHOUSE WITHOUT ENTERING THE GARDEN AND STANDING ON THE TREEHOUSE. WITH PRIOR NOTICE WE ARE HAPPY TO ALLOW ACCESS AT A REASONABLE TIME.



**Statement**

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

AS DETAILED ON THE ATTACHED GROUNDS FOR APPEAL STATEMENT, THE BASIS FOR REFUSAL DOES NOT APPEAR TO HAVE TAKEN INTO CONSIDERATION THE PURPOSE OF THE TREEHOUSE, ANY OPPORTUNITY FOR MODIFICATION OF THE TREEHOUSE TO ALIGN IT WITH PLANNING GUIDELINES OR THE CONSIDERATION TAKEN TO ADDRESS ISSUES SUCH AS PRIVACY OF NEIGHBOURS. EVERY REQUEST FOR A MEETING TO DISCUSS OPTIONS HAS BEEN REJECTED AND THE OPTIONS GIVEN BY THE PLANNING OFFICE WERE THEN TAKEN AWAY FROM US. THE PROCESS HAS NOT BEEN REASONABLE.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes  No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

**List of documents and evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

LOCATION PLAN  
 PROPOSED ELEVATIONS  
 PROPOSED LAYOUTS  
 PROPOSED SITE LAYOUTS  
 PROPOSED STREET ELEVATIONS  
 GROUNDS OF APPEAL STATEMENT  
 PLANNING COMPLAINT LETTER (FOR INFORMATION)  
 DECISION NOTICE

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**Declaration**

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed [REDACTED]

Date 3rd MARCH 2016



Grounds of Appeal Statement In relation to:

Planning Appeal Number: 100004810-001 (Original Planning Application P151391-7)

For the Erection of Tree House to Rear of Existing Dwelling (retrospective)

This appeal relates to a retrospective planning application for a children's tree house play structure which we erected in the garden of our property during the summer of 2014. We did not intentionally avoid applying for planning permission, as we are aware that the property is a listed building and we have previously applied for planning permission, building warrant, listed building consent and tree work approval in relation to the property. We had mistakenly assumed that being (a) a children's play structure and (b) similar in structure and materials of construction to a garden shed, that it would not require permission. As soon as we were made aware of this error, we contacted the council, sought advice and applied for retrospective permission.

The reason for the appeal is as a result of three issues:

- (a) Because the structure is intended as a children's play-thing, it does not need to remain indefinitely, and therefore would be appropriate to be considered for temporary planning permission. When we originally contacted the council for advice on the correct remedial action to take once we had been made aware of our error of not applying for planning permission prior construction it, the indications were that our error was minor, permission should not be difficult to get, and we were advised to apply for full permission, with the potential to reduce the application to temporary permission if full permission was not granted. We have subsequently been advised, however, that temporary permission would not be considered in this case. This neither makes sense, nor is it aligned with the advice we were originally given.
- (b) Over the course of the planning application process we were contacted by Aberdeen City Council's Planning Office to advise that they intended to recommend rejection of our application and to give us two options. One was to go ahead with our application with a significant risk of rejection, and one was to withdraw our application with a view to modifying our application and resubmitting it at a later date. Twice we requested a meeting with the Council Planning Department, to understand what options for modification we may have to bring the structure in line with acceptable planning guidelines, but we were refused a meeting outright. Our application was subsequently rejected without us ever having made a decision as to which option we intended to accept, as a result of which the option was arbitrarily removed, which we consider unreasonable. We continue to have no feedback on what modifications to the structure would bring it within planning guidelines due to the requests for meetings being rejected. As a result, we have had no opportunity to try to make adjustments to the structure to bring it in line with expectations. We have considered painting the structure grey to blend it in with the surrounding granite walls and buildings, and we have considered fitting a slate roof to blend it in with the neighbouring garage, but given the risk of having to remove the structure, and the lack of dialogue with the council, we have not pursued either of these options for the time being. We have raised a complaint with the planning department on this both these issues independently of this appeal and await receipt of

their findings into the complaint. A copy of the complaint has been included with this appeal for information.

- (c) The tree house was constructed for as a play-structure for our children, with the involvement of the children in the construction process. Having lived in a number of city centre properties, we are very aware of the sensitivities of overlooking other properties, and therefore constructed the treehouse so as to minimise this. The east side of the treehouse has the potential to overlook the rear gardens of the properties in Fountainhall Road, so we avoided putting any windows in that elevation, and also constructed a solid wall to prevent children being able to overlook the gardens in any way. To the south there was the potential to overlook the rear of the properties on Hamilton Place, so there were no windows put into that elevation. The windows that we did put in are intentionally small and mainly face our own house. The location of the tree house means that the majority of the view is into our own house, and what little overview of the neighbours properties there is, is less than the view we have from within our existing house. The design and positioning of the houses beside and behind 7 Kings Gate means that all the houses have a clear view into each other's rear windows, over their gardens, and in fact, due to the unusual feature of two angled windows in the rear of the property, directly into our neighbour's house next door. The limited views the tree house has over neighbouring properties are significantly less than are available from our house, if we were inclined to look into other properties. Of course, with it being intended for children's use, children are even less interested in looking into neighbouring properties than adults tend to be, and so invasion of privacy should not be an issue at all. We invited the planning department to visit the site and consider the sightlines and view from the treehouse themselves, however, as noted above, any suggestion of meetings whether onsite or at the council offices were rejected.

We have had many positive comments regarding the treehouse from neighbours, and not a single complaint, concern or negative comment. We have had sight of the two comments submitted from concerned neighbours as part of the planning process, and it is interesting to note that one actually had no issue with the treehouse – only a request that it is painted to blend in better – which we had hoped to do anyway. The other was a general comment relating to a perceived risk that approval of this treehouse could set a precedent – although a precedent for what was not entirely clear, however, considering the nature and purpose of this structure, it seems unlikely that it could be used as a precedent for inappropriate developments of a residential nature, which would presumably be of primary concern.

We are happy to engage in dialogue with the council planning department and are happy to work to identify a middle ground, either adapting the structure to meet the planning requirements or amending the planning application to become a temporary planning application (or a combination of the two), however, without dialogue we cannot do either. We also believe that a site visit to review the structure, the sightlines from the structure, and the comparable sightlines from our house, as well as the very comparable nature of the materials used in the construction to the materials of many neighbouring sheds, garages and outhouses, would allow the planning department to take a more thorough and considered view of the structure in question.

Drummond Lawson 1<sup>st</sup> March 2016

# Agenda Item 9

Signed (authorised Officer(s)):

BROOKFIELD, LAND AT, MURTLE DEN ROAD, MILLTIMBER

DEMOLITION OF EXISTING DWELLINGHOUSE AND ERECTION OF 3 NO.DWELLINGHOUSES

For: Mr Richard McDonald

Application Type : Planning Permission in Principle

Application Ref. : P151376

Application Date : 31/08/2015

Advert : Dev. Plan Departure

Advertised on : 09/09/2015

Officer : Paul Williamson

Creation Date : 7 January 2016

Ward: Lower Deeside (M Boulton/A

Malone/M Malik)

Community Council: No response received

## **RECOMMENDATION:**

**Refuse**

## **DESCRIPTION**

The application site of 1.01 hectares forms the domestic curtilage of the residential property known as 'Brookfield'. It is located on the east side of Murtle Den Road, a private road, situated to the north of North Deeside Road (A93) between Milltimber and Bielside.

Murtle Den Road is characterised by (thirteen) large detached dwellinghouses set within generous plots in a mature woodland setting. It is a no-through road and can only be accessed from North Deeside Road.

The existing dwelling 'Brookfield' is a one and a half storey modern detached dwellinghouse facing south with a garage extension on the north (rear) elevation. A block driveway leads down into the site, from the gated entrance. The existing dwelling lies to the north of the site, within relatively open yet in some places landscaped gardens, towards North Deeside Road.

In respect of topography, the site slopes down from Murtle Den Road from west to east, while also falling from north to south.

The boundaries of the site are defined by a number of coniferous and deciduous trees, with a total of 10 groupings identified, in addition to 14 individual specimens. They can be summarised as follows:

- G1 – G5: Dense Hedges along the southern and eastern boundary comprising Lawson Cypress, estimated at around 30 to 40 years old. Height of up to 20 metres. Some interspersed species including sycamore, Norway maple, holly and rhododendron;
- G2: Group comprises 17 mature mixed broadleaves (including sycamore, Norway maple, small leafed lime, and horse chestnut) up to 24 metres in height. Located to the western boundary at Murtle Den Road;
- G7: This group overhangs the northern boundary of the site to 'Birkdale' and includes a row of 45 Douglas Fir of approximately 50 to 60 years old;
- G9: Overhang the stream to the south west, and comprise Sitka Spruce and Larch, together with some younger Leyland Cypress. Up to a height of 24 metres.

It should be noted that the Arboricultural report indicated the majority of the trees as Category C, with a limited value, and perceived lifespan.

A small water course runs along the south western boundary of the site.

To the west of the site across Murtle Den Road, which is itself tree lined, are open fields associated with Oldfold Farm. To the north beyond Brookfield, is the house known as 'Birkdale'. To the south, beyond the existing line of trees, are open fields which are also in the ownership of the applicant. To the east are open fields.

## **RELEVANT HISTORY**

P141858 – Identical proposal to the current submission, with the demolition of the existing dwelling, and erection of three dwellings. That application was refused at Planning Committee on 23 April 2014 for the reason that the proposal was contrary to Green Belt Policy (NE2) and could erode the character or function of the Green Space Network covered under Policy NE1.

Nearby:

P131419 – Erection of New Three Storey Dwellinghouse (Feu Split) at 'Pinelands', Murtle Den Road – Initially refused under Delegated Powers on 7 February 2014. Subsequent appeal to the Local Review Body was sustained on 4 July 2014.

## **PROPOSAL**

Planning permission in principle is sought to demolish the existing property 'Brookfield' and erect three detached dwellinghouses on the site. The feu split would see three curtilages of similar size (The indicative layout illustrates broad curtilages of 4000 sq.m for one plot, with the remaining two plots being in the region of 3000 sq.m), within this broadly triangular site.

At this time, with the application being for planning permission in principle, the submitted plans are only indicative. As such, there are no details of the dwelling design (or scale), nor any external finishing materials. The Design Statement does however state that the dwellings would be west facing to provide an active frontage to Murtle Den Road

The dwellinghouses would share the existing driveway accessed off Murtle Den Road. Minimal tree removal of some recently planted species would be required to allow development. Tree management is recommended by the applicant's arboriculturalist, with some additional/replacement planting in its place.

The applicant acknowledges that SEPA do not allow for private drainage systems in areas covered by a public sewer. As such, the proposed development is indicated as being connected to new public sewers which shall run down Murtle Den Road, and connect into the existing main sewer. Surface water drainage would be dealt with via SUDS, with some infiltration, and some discharge to the local watercourse.

## **Supporting Documents**

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at -

<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref=151376>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

- Bat Survey Report
- Protected Species Scoping Report
- Tree Survey Report
- Supporting Planning Justification
- Design Statement
- Drainage Assessment

## **CONSULTATIONS**

**Roads Development Management** – No objection. Would support this development subject to conditions relating to: the provision of adequate car parking spaces for each property; the provision of a visibility splay onto Murtle

Den Road; the upgrade of Murtle Den Road to an adoptable standard between North Deeside Road and the site access; and, the first 5m of the site access being surfaced.

**Environmental Health** – No observations.

**Communities, Housing and Infrastructure (Flooding)** – No observations.

**Waste/Recycling** – No objection. Indicate the requirements for waste bins and recycling provision/kerbside arrangements.

**Community Council** – No comments received.

## **REPRESENTATIONS**

One letter of objection has been received. The objections raised relate to the following matters:

- The site lies within the Green Belt and there is a presumption against development with only limited exceptions which the development does not fall within;
- The proposal is out of keeping with the character of Murtle Den Road;
- The proposal is not capable of implementation; and
- The proposed development will challenge the capacity of Murtle Den Road.

In addition, two letters of support were also received in respect of these proposals. They raised the following aspects;

- The precedent for development has already been set on Murtle Den Road for the erection of 9 new houses, a new feu split, and the erection of a further two dwellings.
- The development of 2 additional houses can only be beneficial to the area;
- Any land within the boundary of the AWPR/Bypass should have the opportunity to be developed;
- The proposals won't been seen from North Deeside Road;
- Development has already started on Oldfold Farm.

## **PLANNING POLICY**

### **Aberdeen Local Development Plan**

Policy NE1 – Green Space Network: states that the Council will protect, promote and enhance the wildlife, recreational, landscape and access value of the Green Space Network. Proposals for development that are likely to destroy or erode the character or function of the Green Space network will not be permitted.

Policy NE2 – Green Belt: no development will be permitted in the green belt for purposes other than those essential for agriculture, woodland and forestry, recreational uses compatible with an agricultural or natural setting, mineral extraction or restoration or landscape renewal.

Policy D1 (Architecture and Placemaking) – To ensure high standards of design, new development must be designed with due consideration for its context and make a positive contribution to its setting. Factors such as siting, scale, massing, colour, materials, orientation, details, the proportions of building elements, together with the spaces around buildings, including streets, squares, open space, landscaping and boundary treatments, will be considered in assessing that contribution.

Policy D2 (Design and Amenity) – Privacy shall be designed into higher density housing, residential development will have a public face to the street and private face to an enclosed garden or court, residents shall have access to sitting out areas, car parking should not dominate, opportunities should be made of views and sunlight, measures should be included to design out crime and external lighting shall take into account amenity and the effects of light spillage.

Policy NE5 (Trees and Woodland) – There is a presumption against all activities and development that will result in the loss of, or damage to, established trees and woodlands that contribute significantly to nature conservation, landscape character or local amenity, including ancient and semi-natural woodland which is irreplaceable.

Policy NE6 (Flooding and Drainage) – Surface water drainage associated with development must be the most appropriate available in terms of SUDS and avoid flooding and pollution both during and after construction.

In areas not served by the public sewer, a private sewer treatment system for individual properties will be permitted provided that the developer demonstrates that there will be no adverse effects on the environment, amenity and public health.

Policy NE8 (Natural Heritage) – Development that, taking into account any proposed mitigation measures, has an adverse effect on a protected species or an area designated because of its natural heritage value will only be permitted where it satisfies the relevant criteria in Scottish Planning Policy.

## **Proposed Aberdeen Local Development Plan**

Policy D1 – Quality Placemaking by Design

Policy D2 – Landscape

Policy I1 – Infrastructure Delivery and Planning Obligations

Policy T2 – Managing the Transport Impact of Development

Policy T3 – Sustainable and Active Travel

Policy NE1 – Green Space Network

Policy NE2 – Green Belt

Policy NE5 – Trees and Woodlands

Policy NE6 – Flooding, Drainage and Water Quality

Policy NE8 – Natural Heritage

Policy R7 – Low and Zero Carbon Buildings, and Water Efficiency

## **Supplementary Guidance**

### Subdivision and Redevelopment of Residential Curtilages

Adjacent Site:

Oldfold Development Framework and Masterplan

The agricultural land predominately to the west is identified in the Local Development Plan as Opportunity Site 62 (OP62) and is known as ‘Oldfold’ and extends to 48.9 hectares. Oldfold is allocated for the development of 550 residential units and 5 hectares of employment land in the period between 2007 and 2026.

## **EVALUATION**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, regard is to be had to the provisions of the development plan and that determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

### **Principle of Residential Development**

Scottish Planning Policy (SPP) is clear in identifying that the aim of green belt is to direct planned growth to the most appropriate location, and to protect and enhance the quality, character and setting of towns and cities. In this instance, while replacing an existing dwelling, and providing an additional two properties, the site is located within the wider Green Belt. As such, the allowance of additional residential development in this location may have a detrimental impact on the character of the landscape setting of this part of the green belt, which would be contrary to the advice within paragraph 163 of SPP which states: “the cumulative erosion of a green belt’s integrity through the granting of individual planning permissions should be avoided”.

On a related consideration are the principles of policies NE2 - Green Belt and NE1 - Green Space Network. The wider aim of the green belt has already been addressed, although the Local Development Plan does provide specific criteria for acceptable development in the Green Belt. In this instance, the proposal does not meet any of the defined criteria for acceptable development in such an area, contrary to the claims of the applicant’s agent, and is therefore deemed to be contrary to Policy NE2. In respect of the Green Space Network (GSN), as the



proposal would seek to develop existing garden ground which is synonymous with the character of housing along Murtle Den Road, it is considered that there is potential for further development to erode or destroy the character or function of the GSN in this location and would therefore be contrary to the aims of policy NE1.

### **Changing Character of the Area**

It is not considered that there have been any change in circumstances following the previous refusal of April 2015 (Ref: P141858) which was for an identical proposal. The applicant's agent outlines that they consider that the site no longer warrants a green belt designation given the commencement of the a major residential development at Oldfold, immediately adjacent to the application site. However, the commencement of a site allocated for development through the extant and proposed Local Development Plans, is not considered to have a bearing on this site, which remains within the Green Belt. The Proposed Local Development Plan was recently considered by the Communities, Housing and Infrastructure Committee on 27 October 2015, where it was agreed as the settled view of the Council for submission to the Examination by Scottish Ministers. As such, as the Planning System is plan led, it is not considered that sufficient justification has been provided in this instance to warrant a departure from the Development Plan.

Through the allocation of the Oldfold Masterplan site (which acts as an extension to Milltimber), the provision of 550 homes on land to the western edge of Murtle Den Road, shall undoubtedly have an effect on the wider character of the area. However, it should be noted that the Opportunity Site shall almost in its entirety be accessed from either a new road, or existing roads to the west. Accordingly, only a further 12 dwellings (with 9 as part of the Masterplan area, 2 separate permissions, and 1 additional dwelling obtained through the Local Review Body) are to be accessed to the north off Murtle Den Road. In light of the general topography, and the large presence of trees and woodland, the Oldfold Development would not necessarily be seen in the same context as the Murtle Den valley itself, and would therefore not justify the provision of further development in the Green Belt, as proposed by this application. Accordingly, the provision of development at Oldfold represents planned growth of an existing urban area, and would not act as a precedent for development of this nature. It must also be noted that the Oldfold development meets the housing needs for Lower Deeside, with no further sites identified for the release of housing land in this area. Therefore there is no need for a further release of development land, especially so close to the existing allocation, or within a Green Belt location.

### **Layout, Access and Design**

The character of Murtle Den, which comprises large homes in sizeable grounds within a high quality woodland setting, is acknowledged. However as noted

above, the general principle of development on the site cannot be established against Scottish Planning Policy nor the Local Development Plan Policy as it relates to Green Belt locations. The general character of the area would not be reflected through the scale and density of development proposed. The general size of individual curtilages does vary along Murtle Den Road, with the likes of Brookfield being in the region of 1 ha, and Birkdale at 0.8 ha. The development proposal would introduce three plots varying around 0.3 ha to 0.4ha, and while it is comparable to the likes of 'Tree Tops' at 0.32 ha, it is not synonymous with the predominant scale and character of dwelling curtilages.

While the principle has not been established, there is some merit in outlining the difficulty in complying with the more detailed aspects of Council policy relating to design and amenity. Policy D2 is clear in outlining that residential development shall have a public face to a street, and a private face to an enclosed garden or court. In this instance, the layout which is indicative, indicates that one dwelling would front (westwards) towards Murtle Den Road, with the remaining two dwelling effectively being 'backland' development beyond to the east. In addition, none of the dwellings are currently indicated as maximising views to the south, or to be orientated to maximise from passive solar gain. This would result in these aspects of the proposal being contrary to Policy D2 of the Adopted Local Development Plan. However, as the proposed layout is indicative, it would not in itself be a reason for refusal given that the principle of the dwellings has not been established.

In addition, it is also considered that the proposals are contrary to the Supplementary Guidance (SG) relating to the Sub-division and Redevelopment of Residential Curtilages. It states within paragraph 3.6 that in respect of amenity space "Residential development should have a public face to the street, and a private face to an enclosed garden or court". This also reflects policy D2 considered above. In this instance, the proposal would see one property orientated towards Murtle Den Road, within a further two properties in a backland position with no street frontage. As such, the proposal fails to meet with the necessary criteria. Furthermore, within Section 5.0 issues relating to the density, pattern and scale of development are also raised. The general pattern of development along Murtle Den Road is for large detached properties within generous feus. While there are a few exceptions in terms of feu size, the provision of tandem or backland development has not been established, nor would it be recommended positively. As such, the proposal, while indicative, would also be contrary to the SG in this regard, as it could create a second building line which would fundamentally erode the character and residential amenity of such areas.

### **Drainage**

In terms of foul drainage, the closest Scottish Water sewer is located at the junction of Murtle Den Road with North Deeside Road, some 250m to the south

of the site access. Advice from SEPA states that within sewered areas, there is a principle against the use of private foul drainage systems. As such, unless unviable, a connection should be made to the public system. However, if the principle of planning permission had been established, it is recommended that the use of a planning condition requiring a connection to the public system, once it is provided down Murtle Den Road, as a part of the associated Oldfold proposal. Surface water drainage could ultimately be adequately addressed through a suspensive planning condition.

## **Transport**

The traffic generated by the three proposed dwellinghouses would be relatively minor. However, Roads Officers have indicated that in addition to the provision of the necessary visibility splays and surfacing requirements, the applicant would also have to upgrade the initial stretch of Murtle Den Road to an adoptable standard, from North Deeside Road to the site entrance. If the principle of the development had been established, this would be dealt with by means of a suspensive condition which would have prevented development prior to such works being undertaken. However, it appears from one of the submitted representations that the applicant may not have the necessary legal right to undertake such works. That, however, is not a material consideration in the determination of this planning application. Ample parking can be provided within the proposed plots for the size of the properties and the proposed means of access to each site is acceptable. Accordingly, no concerns have been raised by the Council's roads service in this regard.

Notwithstanding, the requirements of the Roads Officer could however, have a distinct impact upon the character of the area. Murtle Den Road is recognisable by its tree lined, narrow form with passing places. The requirement to widen the initial section of the road could result in a more suburban appearance as opposed to the existing quaint rural character. Furthermore, it could also require the felling of a number of existing trees alongside the road, which would also detract from the existing character of the immediate area.

## **Wildlife, Habitat and Protected Species**

In light of the proposal including the demolition of the existing dwellinghouse, and the general landform and environment being a suitable habitat for foraging bats, it was requested that a Protected Species Survey be undertaken. This included a Scoping Report for all protected species, and a specific Bat Inspection Survey.

The latter survey indicated that the presence of the following evidence was recorded: potential bat droppings. However, the licenced bat surveyor did highlight that the emergence surveys (sunrise and sunset) indicated no signs of bats, was undertaken at a time outwith the main active season for bats in the UK. As such, it concludes that there was no evidence of bats roosting in this building

and recommends that a further summer survey including bat emergence and re-entry surveys would be necessary. Policy NE8 of the Adopted Local Development Plan makes it clear that proposals which may have an impact upon protected species, should ensure that there can be appropriate mitigation in place in line with the requirements of Scottish Planning Policy. In this instance, the Bat Survey has indicated that the presence of bats is unlikely, and the applicant is therefore considered to have demonstrated that no harm would arise to a protected species through these proposals.

In addition, the Protected Species Scoping Report did highlight the potential for breeding birds on site. However, in light of the development being for planning permission in principle, and the potential to implement the development without disturbing or resulting in the loss of the existing trees, breeding birds are not of a particular concern at this time, as with the previous planning application.

The submitted Tree Survey also noted that some of the younger planting on sites did have significant grazing damage from rabbits and roe deer. However, as noted above the principle of development cannot be accepted at this time. Notwithstanding, the development in theory could proceed without damaging the wildlife habitat for roe deer, whom are transient in the area.

In respect of trees, while there are a substantial number of trees particularly to the site boundaries, development could in theory take place with minimal impact on the existing trees, apart from the removal of some more recent planting additions within the garden ground, and the provision of a visibility splay on Murtle Den Road. However, the principle of the development has not been established due to the over-riding conflicts with Green Belt policy.

### **Letters of representation**

The following matters were raised within the letters of representation, which have not already been addressed above:

- **The proposal development will challenge the capacity of Murtle Den Road** - No objection has been raised by Roads Officers. As such, the technical requirements would have to be met should planning permission ever be approved for the site. However as noted above, the principle of the development has not been established.
- **No Negative Visual Impact** – while the application site is relatively secluded by the presence of substantial treed boundary features, it does not in itself outweigh the over-riding policy context. As noted above, the purpose of the Green Belt is to protect the landscape setting of the City, and prevent coalescence of built up areas. As such, the allowance of such a development could cumulatively lead to the erosion of the Green Belt,

which is not in accordance with Scottish Planning Policy or Policy NE2 of the Adopted Local Development Plan.

## **Summary**

In summary, the proposal to demolish the existing residential dwelling and to provide three dwellinghouses remains to be considered contrary to the principles of Green Belt policy, in that the proposal would result in the loss of character, or landscape setting of the area, and could lead to a precedent for similar development proposals which cumulatively would be to the detriment of the wider Green Belt of Aberdeen City. There are not considered to be any change in circumstances in comparison to the identical application which was refused in April 2015, which would warrant the approval of this application.

## **Proposed Aberdeen Local Development Plan**

The Proposed ALDP was approved for submission for Examination by Scottish Ministers at the meeting of the Communities, Housing and Infrastructure Committee of 27 October 2015. It constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to representation and are regarded as unresolved issues to be determined at the Examination; and
- the relevance of these matters to the application under consideration.

Policies and proposals which have not been subject to objection will not be considered at Examination. In such instances, they are likely to be carried forward for adoption. Such cases can be regarded as having greater material weight than those issues subject to Examination. The foregoing can only be assessed on a case by case basis. In relation to this particular application the policies of the Proposed LDP largely reflect those contained within the extant LDP, and therefore there are no material considerations which would outweigh those existing policies.

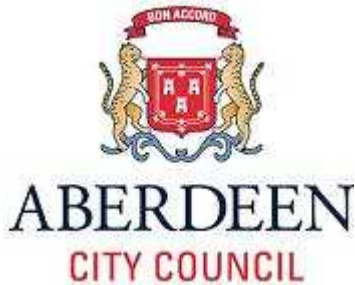
## **RECOMMENDATION**

### **Refuse**

## **REASONS FOR RECOMMENDATION**

(1) That the site lies within the Green Belt which is defined to protect and enhance the landscape setting and identity of urban areas and in which there is a

presumption against most kinds of development with only limited exceptions. The proposed development does not comply with any of the specified exceptions to the presumption against development within the Green Belt and therefore does not comply with Policy NE2, and could erode the character or function of the Green Space Network thus conflicting with Policy NE1 of the Aberdeen Local Development Plan 2012. If permitted, this application would create a precedent for more, similar developments to the further detriment of the objectives of the Green Belt policy. If approved, the necessary road improvements could also result in a significant impact on the character of the area, through the provision of a widened access road, with the potential loss of a number of trees. Furthermore, the proposal is also considered to be contrary to the Supplementary Guidelines relating to the Sub-division and Redevelopment of Residential Curtilages, in that it would result in the creation of a secondary building line in a backland location which would erode the character and residential amenity of the area.



**PLANNING & SUSTAINABLE DEVELOPMENT**  
Communities, Housing and Infrastructure  
Business Hub 4, Marischal College, Broad Street,  
ABERDEEN. AB10 1AB

## THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

# Refusal of Planning Permission in Principle

Knight Frank LLP  
4 Albert Street  
Aberdeen  
Aberdeen City  
AB25 1XQ

on behalf of **Mr Richard McDonald**

With reference to your application validly received on 31 August 2015 for Planning Permission in Principle under the above mentioned Act for the following development, viz:-

**DEMOLITION OF EXISTING DWELLINGHOUSE AND ERECTION OF 3 NO.DWELLINGHOUSES**  
at **Brookfield, Land at, Murtle Den Road, Milltimber**

the Council in exercise of their powers under the above mentioned Act hereby REFUSE Planning Permission in Principle for the said development specified in the application form and the plan(s) and documents docketed as relative thereto and numbered as follows:-

Location Plan and Site Plan 320988/01

The reasons on which the Council has based this decision are as follows:-

(1) That the site lies within the Green Belt which is defined to protect and enhance the landscape setting and identity of urban areas and in which there is a presumption against most kinds of development with only limited exceptions. The proposed development does not comply with any of the specified exceptions to the presumption against development within the Green Belt and therefore does not comply with Policy NE2, and could erode the character or function of the Green Space Network thus conflicting with Policy NE1 of the Aberdeen Local Development Plan 2012. If permitted, this application would create a precedent for more, similar developments to the further detriment of the objectives of the Green Belt policy. If approved, the necessary road improvements could also result in a significant impact on the character of the area, through the provision of a widened access road, with the potential loss of a number of trees. Furthermore, the proposal is also considered to be contrary to the Supplementary Guidelines relating to the Sub-division and Redevelopment of Residential Curtilages, in that it would result in the creation of a secondary building line in a backland location which would erode the character and residential amenity of the area.

The plans, drawings and documents that are the subject of this decision notice are numbered as follows:- Location Plan and Site Plan 320988/01

Pete Leonard  
Corporate Director

Date of Signing 8 January 2016

A handwritten signature in black ink that reads "Daniel Lewis". The signature is written in a cursive style with a capital 'D' and 'L'.

**Daniel Lewis**  
Development Management Manager

Pete Leonard  
Corporate Director



**NB. EXTREMELY IMPORTANT INFORMATION RELATED TO THIS GRANT OF PLANNING PERMISSION IN PRINCIPLE**

1. The applicant has the right to have the decision to refuse the application reviewed by the planning authority and further details are given in Form 2 attached below.

2.

Regulation 28(4)(a)

Form 1

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

*Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions*

3. If the applicant is aggrieved by the decision of the planning authority to –

- a. refuse planning permission for the proposed development;
- b. to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
- c. to grant planning permission or approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A(8) of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. Any requests for a review must be made on a 'Notice of Review' form available from the planning authority or at <http://eplanning.scotland.gov.uk/>.

Notices of review submitted by post should be sent to –

Planning and Sustainable Development  
Communities, Housing & Infrastructure  
Aberdeen City Council  
Business Hub 4  
Ground Floor North  
Marischal College  
Broad Street  
Aberdeen  
AB10 1AB

Pete Leonard  
Corporate Director

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 owners 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.

Pete Leonard  
Corporate Director

**PI**

---

**From:** Rebecca Walker <Rebecca.Walker@ledinghamchalmers.com>  
**Sent:** 17 September 2015 09:49  
**To:** PI  
**Cc:** Stephen Morrice; {F1506671}.LIVE@lcaberserver10.ledinghamchalmers.com; David Scott  
**Subject:** Objection to Planning Application 151376 - Demolition and Erection of 3 No. Dwelling Houses, Brookfield, Murtle Den Road, Milltimber, Aberdeen [IWOV-LIVE.FID1506671]  
**Attachments:** Objection (PDF).PDF

Dear Sirs

**Planning Application Reference 151376**

**Demolition of Existing Dwellinghouse and Erection of 3 No. Dwelling Houses**

**Land at Brookfield, Murtle Den Raod, Milltimber, Aberdeen, AB13 0HS**

Please find the attached Objection in respect of the above planning application. A hard copy has been sent to your offices.

Kindly acknowledge receipt.

Yours sincerely

Rebecca

Rebecca Walker

Senior Associate  
Ledingham Chalmers LLP, Solicitors

*Admitted as a solicitor in Scotland and in England and Wales*

Ledingham Chalmers LLP, Solicitors

Johnstone House 52-54 Rose Street Aberdeen AB10 1HA (Registered Office)

DX: AB15 Aberdeen LP-39 Aberdeen-1

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Website: [www.ledinghamchalmers.com](http://www.ledinghamchalmers.com)

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<<Objection (PDF).PDF>>

**PLANNING APPLICATION REFERENCE: 151376**

**DEMOLITION OF EXISTING DWELLINGHOUSE AND ERECTION OF 3 NO. DWELLING HOUSES  
LAND AT BROOKFIELD, MURTL DEN ROAD, MILLTIMBER, ABERDEEN, AB13  
0HS**

We act for The Trustees for the Managers of the Widows Fund of the Seven Incorporated Trades of Aberdeen ("the Trades Widows"), having a place of business at Trinity Hall, Holburn Street, Aberdeen.

Our clients **object** to the application which has been submitted by Mr Richard McDonald for the demolition of the existing dwellinghouse and erection of 3 no. dwelling houses on land at Brookfield, Murtle Den Road, Milltimber, Aberdeen for the reasons set out in the below paragraphs.

Reasons for objection:

1. the site lies within the Green Belt and there is a presumption against development with only limited exceptions. The proposed development does not fall within any of these exceptions;
2. the proposed development is out of keeping with the character of Murtle Den Road;
3. the proposed development is not capable of implementation; and
4. the proposed development will challenge the capacity of Murtle Den Road.

Dealing with each of those in turn:

**1. Green Belt**

- 1.1 The site lies within the Green Belt. The Aberdeen Local Development Plan contains several policies pertaining to Green Belt land:

1.1.1 Policy NE1 - Green Space Network. This Policy sets out that the Council will protect, promote and enhance the wildlife, recreational, landscape and access value of the Green Space Network. Proposals that are likely to destroy or erode the character or function of the Green Space Network will not be permitted.

1.1.2 Policy NE2 – Green Belt. This Policy provides that no development will be permitted in the Green Belt for purposes other than those essential for agriculture, woodland and forestry, recreational uses compatible for an agricultural or natural setting, mineral extraction or restoration or landscape renewal. However proposals will be permitted if all the following exceptions apply: -

- (a) the development is within the boundary of the existing activity;
- (b) the development is small scale;
- (c) the intensity of activity is not significantly increased; and
- (d) any proposed built construction is ancillary to what exists.

- 1.2 In terms of Policy NE1 and NE2 (together with Policy NE1 and NE2 of the Proposed Aberdeen Local Development Plan) development will not be permitted in the Green Belt unless it meets the all the above exceptions. Our clients' view is that the application meets none of these and therefore should be refused. Dealing with these in turn:
- 1.2.1 The Development may be within the boundary of the curtilage of the existing house, however the activity in terms of Policy NE2 is low density residential housing. The building of an additional two houses, and loss of surrounding ground is out with the existing activity.
  - 1.2.2 The proposed development is not small scale in comparison to the surrounding area. Murtle Den Road is a low density development, with each property enjoying a sizeable plot and privacy. Again, the building of an additional two houses, and reconfiguration of the site leading to a loss of privacy, is not small scale.
  - 1.2.3 The intensity of activity will be significantly increased. There is presently one house on the site; the applicant seeks to increase that to three. The design statement sets out that each house plot must provide for on-site parking for at least three vehicles. It is reasonable to assume that each plot will have two cars, together with space for visitors. That represents a minimum of four additional vehicles accessing the site and using Murtle Den Road on a regular basis. Visitors to the two additional houses will increase that number. Further, an additional two houses will mean the usual noise associated with a household will increase three fold. That will include, for example, the noise associated with general maintenance of the houses and grounds and rubbish disposal.
  - 1.2.4 The proposed built construction is most certainly not ancillary to what exists. The proposal involves the demolition of the existing house and construction of three new houses. There will be a total reconfiguration of the site and the application cannot under any circumstances meet this test for an exception to the policy.
- 1.3 Our clients are aware of an application for development in the Green Belt of three houses which was recently approved (P141260). However, that application can be distinguished from the present application for the following reasons:
- (i) application P141260 pertained to a site of 2 hectares in size. The size of the current application site is 1.0088 hectares; and
  - (ii) application P141260 was in essence, a "gap site" abutted to the east by Deeside Gardens, a development comprising a mix of detached and semi-detached properties, and to the west by residential dwellings typically of large detached granite properties in substantial gardens. The three houses did not therefore represent over-development and were not out of keeping with the size and scale of the surrounding properties.
- 1.4 The current application can also be distinguished from application P120919. That application granted planning consent for two houses to be built at Inchrya, at the far end of Murtle Den Road. Consent for those houses was



however granted as Inchrya was zoned as part of OP62, being the Oldfold site, and not the Green Belt unlike the current application.

## **2. Character of Murtle Den Road**

2.1 Murtle Den Road is characterised by large, detached houses set within private areas of mature woodland. The area is very different to the residential area to the West as it is very low density, creating an exclusive residential area. While the development at Oldfold may have now commenced, great care was taken in the Masterplan, adopted in 2013, to preserve the character of Murtle Den Road. The Design and Access Statement and Masterplan which forms part of the Oldfold Planning Permission in Principle notes that the character of the Murtle Den area should replicate the existing housing, enclosed by woodland and distinct from the wider development area. It provides that the area should be made up of very large detached plots set within mixed woodland and accessed from an extension to the existing driveway. It further provides that development in this area should be in keeping with the character of the existing properties.

2.2 Aberdeen Local Development Plan Policy D1 – Architecture and Placemaking provides that in order to ensure high standards of design, new development must be designed with due consideration for its context and make a positive contribution to its setting.

2.3 The proposed development would detract from the character of Murtle Den Road. A development of three houses on the former site of Brookfield would be out of keeping with the surrounding houses and landscape. The surrounding houses are all low density and located on sizeable plots. Approval of the application would set a precedent for infill housing, leading to Murtle Den Road becoming a higher density development. It would also create a precedent for development in the Green Belt. The existing character of Murtle Den Road should be preserved and it should not be permitted to resemble the higher density housing with which the Oldfold development will be characterised.

## **3. Development not Capable of Implementation**

3.1 The applicant does not have adequate rights in order to access or service the proposed development. Murtle Den Road, together with the verge adjacent to the roadway, is privately owned by our clients, and has not been adopted by the local authority.

3.2 When our clients sold the plot which now forms the proposed development site the only rights of access which were granted were in favour of a single dwelling house. The applicants are not entitled to increase the burden on the road beyond this.

3.3 Further, the applicant has no ability to comply with any requirements which may be imposed as part of any planning permission or statutory consents in relation to Murtle Den Road. The applicant has no right to resurface the road, widen the road, or comply with any visibility splay requirements in respect of any areas falling outwith their ownership.

- 3.4 The applicant has no rights over Murtle Den Road in relation to any other statutory connections which may be required in respect of the proposed development.
- 3.5 While the matters referred to above are generally property related issues, which could conceivably be dealt with by negative or suspensive conditions in any planning consent, our clients would be concerned if any such planning permission was granted, which was clearly unable to be implemented.
- 3.6 In addition to the above, the title to the proposed development site contains burdens restricting development to one house. While no longer enforceable as feudal burdens, the recent decision of *Cook v Cadman* 2014 S.L.T. (Lands Tr) 13 supports the view that the restrictions on development nonetheless constitute a neighbourhood burden which is enforceable by neighbouring proprietors, including our clients.

#### **4.0 Capacity of Murtle Den Road**

- 4.1 Within the Local Development Plan there is already an existing allocation of nine houses proposed to use Murtle Den Road. Approval of the current application would result in a further four houses (two houses already having been approved pursuant to planning application ref: 120919) being approved in a piecemeal fashion, all relying on Murtle Den Road for access.
- 4.2. The continued approval of piecemeal applications up Murtle Den Road would put the capacity of Murtle Den Road at risk in respect of the already allocated nine houses. There is already a requirement for improvements to Murtle Den Road to be implemented in respect of the existing allocation of nine houses and the current application may necessitate further improvements. However, as set out above, the owners of the proposed development site have no rights in respect of Murtle Den and no ability to carry out any improvements.
- 4.3 The proposed application should not be permitted so as to adversely affect the development already allocated in terms of the Local Development Plan. While our clients object to the planning application, in the event that it is approved it is submitted that the owners of the proposed development site should have to equitably contribute to the cost of any improvements already identified as required to Murtle Den Road and meet fully the costs of any additional improvements identified as required solely as a result of the proposed development.

#### **5. Conclusion**

- 5.1 It is our view that this application (a) is contrary to Policy NE1 and NE2 (together with Policy NE1 and NE2 of the Proposed Aberdeen Local Development Plan); (b) does not fit with the Masterplan for the area; and (c) is incapable of being developed due to fundamental constraints in terms of access and servicing.
- 5.2 We would respectfully ask that these objections are taken into account when considering the application.

**Ledingham Chalmers LLP**



**Agents for the Trades Widows Fund**

[ **insert date** ]



P&SD Letters of Representation		
Application Number:	151376	
RECEIVED	17 SEP 2015	
Nor	Sou <input checked="" type="checkbox"/>	Map
Case Officer Initials:	PAU	
Date Acknowledged	18/09/2015	

## George Milne

---

**From:** webmaster@aberdeencity.gov.uk  
**Sent:** 22 September 2015 17:31  
**To:** PI  
**Subject:** Planning Comment for 151376

Comment for Planning Application 151376

Name : John Reid

Address : J Reid garage services

Brighton place

Peterculter

Ab14 0up

Telephone :

Email : [richmondgarageculter@gmail.com](mailto:richmondgarageculter@gmail.com)

type :

Comment : I support this application, it's garden ground and visually it won't be seen from the northdeeside rd so I see no reason why permission shouldn't be granted especially since development has started on Oldfold farm of 550 houses and mr McDonald is only applying for 2 additional homes plus replacing the current one.

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## George Milne

---

**From:** webmaster@aberdeencity.gov.uk  
**Sent:** 22 September 2015 17:14  
**To:** PI  
**Subject:** Planning Comment for 151376

Comment for Planning Application 151376

Name : nicholas duncan

Address : 24 malcolm road peterculter aberdeen ab10xa

Telephone : 07791629657

Email : [nickyduncancars@yahoo.com](mailto:nickyduncancars@yahoo.com)

type :

Comment : I would like to support this application There is a president that has already been set on murtle den rd in the way of 9 houses been passed from the Seven trades and 1 in another garden and 2 passed on another property too.

The development of 2 additional houses can only be beneficial to the area.

Further more I beleive that any land with in the boundary of the by pass should have the oppportunity to be developed.

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# MEMO



ABERDEEN  
CITY COUNCIL

To	Paul Williamson Planning & Infrastructure	Date	21/09/2015
		Your Ref.	P151376 (ZLF)
		Our Ref.	TR/MW/1/51/2
From	Roads Projects		
Email	MWilkie@aberdeencity.gov.uk		
Dial	01224 523482		
Fax			

Roads Projects  
**Communities, Housing and Infrastructure**  
Aberdeen City Council  
Business Hub 4  
Ground Floor North  
Marischal College  
Broad Street  
Aberdeen AB10 1AB

**Planning application no. P151376**  
**Brookfield, Land at, Murtle Den Road, Milltimber**  
**Demolition of existing dwellinghouse and erection of 3 No.dwellinghouses**

I have considered the above planning application and have the following observations:

#### **1.0 Introduction**

1.1 This application is for Planning Permission in Principle (PPP) for three houses in the place of the existing house Brookfield.

#### **2.0 Parking**

2.1 The Design Statement indicates that 3 no. car parking spaces would be provided for each house, which is in accordance with the Council's parking guidance.

#### **3.0 Access**

3.1 A visibility splay should be provided at the entrance to the site with Murtle Den Road. I am aware that Murtle Den Road is not adopted and that the existing access will be used, however the development represents an intensification of use so, for road safety reasons, I will request that a 2.4m x 43m visibility splay be provided. More detailed drawings showing the access arrangement should be provided at the time of any detailed planning applications.

3.2 The driveway must not be surfaced with any loose material for the first 5 metres adjacent to Murtle Den Road. I would request that this be a condition of any consent.

#### **4.0 Murtle Den Road**

4.1 There are at present approximately 13 dwellings on Murtle Den Road, which is in excess of the number that would require the use of a road constructed to an

Pete Leonard  
Corporate Director

adoptable standard. The proposed application will increase the number of dwellings on Murtle Den Road by a further two. I will therefore ask that a condition be attached to any consent for this application that Murtle Den Road be upgraded to an adoptable standard between the site access and North Deeside Road. The applicant should be advised to contact Colin Burnet within the Council's Roads Construction Consent team for further advice in this regard (tel. 01224 522409).

## **5.0 Strategic Transport Fund**

5.1 The scale of this development means that it will not be eligible for a contribution to the STF.

## **6.0 Conclusion**

6.1 I would support this development proposal, provided that the following conditions be attached to any consent you may wish to grant:

- Each house plot shall have 3 car parking spaces and adequate turning space, in accordance with the Council's car parking standards
- A 2.4m x 43m visibility splay shall be provided at the site access onto Murtle Den Road
- Murtle Den Road shall be upgraded to adoptable standards, between North Deeside Road and the site access
- The first 5m of the site access shall be surfaced



## Paul Williamson

---

**From:** Hannah Lynch  
**Sent:** 29 September 2015 10:39  
**To:** Paul Williamson  
**Subject:** 151376 Brookfield, Murtle Den road- waste and recycling service response

Morning Paul

Please see below for the waste and recycling team response on the development at Brookfield

### **Waste Services response regarding application 151376 Brookfield, Land at Murtle Den road**

As I understand, the development will consist of 3 detached dwellings.

Each property will be provided with:

- **1 x 240litre black wheeled bin for general waste**
- **1 x 240litre brown wheeled bin for food and garden waste** (caddy and liners will be provided as well)
- **Black box and white bag for recycling** (Paper/Cardboard, Plastic Bottles, Tins, Cans and Glass jars and bottles).

Black box and white bag will be swapped for 1 x 240litre recycling wheeled bin in the next future.

Please note that levels of provision may alter in line with changing service requirements across the city that corresponds to alterations in legislation. For example, recycling systems may be altered to accommodate co-mingled collections in due course.

It is pertinent to note that these services will be provided taking account of the following:

#### **General points**

- All the wheeled bins and black boxes/white bags must be presented at the kerbside **only** on the collection day and removed from the kerbside as soon as possible. No containers should be permanently stored on the kerbside.
- **No excess** should be stored out with the containment provided. Information for extra waste uplift is available to residents at either [www.aberdeencity.gov.uk/wasteaware](http://www.aberdeencity.gov.uk/wasteaware) or by phoning 08456 08 09 19.
- A **path** should be provided to the vehicle collection point which is level with bin stores. Pathways to the collection vehicles should be free of obstacles with provision of a slope should there be any gradient; so that any containment can be easily moved to the kerbside on collection days. Pathways should be suitably paved to allow bins to be moved safely.

In respect of any construction site signage it is important to note that in the interests of public safety, it is illegal to advertise on public highways, street furniture and lampposts. Any signage installed to direct visitors to the development requires to be authorised by the Planning Department. Anything installed out-with such approval could be classed as fly-posting and will incur action by Environment Officers.

**Developers must contact Aberdeen City Council using the above details a minimum of two months before properties will be occupied.** Bins **MUST** be on site prior to residents moving into properties.

It might be pertinent nearer the final stages of completion for a representative from Aberdeen City Council's waste team to assess the site to ensure that all of our considerations have been implemented. This will be undertaken by the Recycling Officer for that area. I ask that you contact us with a suitable date and time in the future.

Should you have any further queries or wish to discuss these comments further, please do not hesitate to contact me.

Kind regards  
Hannah

**Hannah Lynch – Waste Strategy Officer**  
Aberdeen City Council  
Waste and Recycling Services  
Communities Housing and Infrastructure  
38 Powis Terrace  
Kittybrewster  
ABERDEEN AB25 3RF

DDI: 01224 489256

E-mail: [HaLynch@aberdeencity.gov.uk](mailto:HaLynch@aberdeencity.gov.uk)

Like our page on Facebook **Recycle for Aberdeen Facebook**

Read the **Recycle for Aberdeen blog**

Pass on household items to be used again through **National Re-use Phonenumber**

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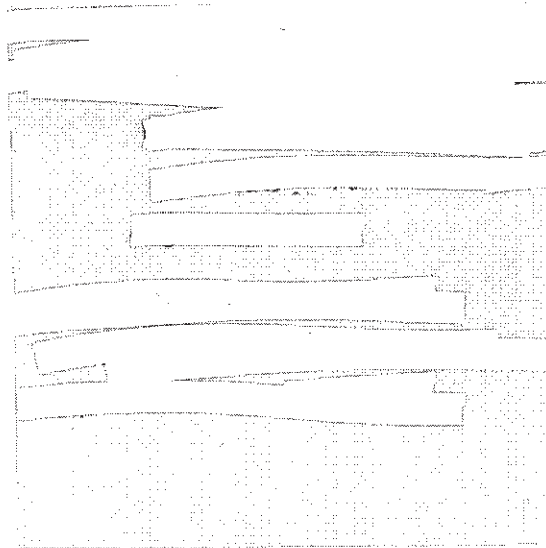
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Fax: 01224 580119

DX AB43 Aberdeen  
LP-33 Aberdeen 1

www.jgcollie.co.uk

Development Management Team  
Enterprise, Planning & Infrastructure  
Aberdeen City Council  
Business Hub 4  
Marischal College  
Broad Street  
ABERDEEN  
AB10 1AB



Our Ref: RC.AD.ZZZ999.23  
Your Ref: SMO/RWK/17015.0034  
Date: 8 October 2015

Dear Sirs

**Richard McDonald**  
**Demolition of Existing Dwellinghouse and Erection of 3 No. Dwellinghouses Land at Brookfield, Murtle Den Road, Milltimber, Aberdeen AB13 0HS**  
**Planning Ref: 151376**

We act on behalf of Richard McDonald.

Our client has copied us in on the letter of objection lodged by Messrs. Ledingham Chalmers on behalf of the Trustees to the Managers of the Widows Fund of the Seven Incorporated Trades of Aberdeen (hereinafter referred to as "The Seven Incorporated Trades"), dated 17 September 2015.

Prior to addressing the various points raised in Messrs. Ledingham Chalmers' aforementioned letter, we would comment as follows.

It should be recognised that whilst our client's site lies within the Green Belt, the site has already been developed by the erection of Brookfield itself.

With regard to our client's application, regard should be had to the topography of the site along with its existing boundary features and the proposed new layout of the same.

The site is surrounded, on all four sides, by mature trees which are in excess of 15 metres in height. The foundations of the three dwellinghouses will be built significantly below the level of Murtle Den Road.

The three dwellinghouses will only be visible from the top of the existing driveway, which will be retained, where it abuts Murtle Den Road. None of the three dwellinghouses, as is the present position with Brookfield, shall be visible to any of the other existing, or proposed, new frontagers of Murtle Den Road. It should also be noted that, under delegated powers,

Anthony J Dawson and Janet Hood are accredited by The Law Society of Scotland as specialists in Liquor Licensing Law  
Graham A Garden is accredited by The Law Society of Scotland as a Family Law Mediator. He and Susan Waters are trained as Collaborative Family Lawyers

James & George Collie and Kinnear & Falconer are trading names of James & George Collie LLP a Limited Liability Partnership registered in Scotland under number SO304786 and having its registered office at 1 East Craibstone Street, Aberdeen AB11 6YQ

**Members**

- Anthony J Dawson
- Philip G Dawson
- John W Sinclair
- Graham A Garden
- Duncan M Love
- Forbes F McLennan
- Gregor F Sim
- Richard D M Shepherd
- Innes R Miller
- Anne-Maryse Churchill
- Brian Sutton

**Consultants**

- Li: J W Mackinnon
- Rory Craddock
- Janet Hood
- Ignacio Chanza

**Senior Solicitors**

- Valienne M Bruce
- Susan Waters
- Caren McNeil
- Mark W Allan
- Kate Mitchell

**Partnership Accountant**

- Watson Hutch CA

**Stonehaven Branch**

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- Stonehaven AB39 2EA
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- Tel: 01224 572777
- property@jgcollie.co.uk

**Property Leasing**

- 30 Bon Accord Street
- Aberdeen AB11 6EL
- Tel: 01224 583338
- letting@jgcollie.co.uk

Aberdeen City Council granted planning application number 131419 for the erection of a new three storey dwellinghouse at Pinelands, Murtle Den Road on 4 July 2014.

In the case of the Pinelands application, a new entrance was created onto Murtle Den Road.

It should be noted that our client's application envisages retaining the existing single access to Brookfield which will serve all three new dwellinghouses.

Turning now to Messrs. Ledingham Chalmer's letter of objection and following their numbering, we would respond as follows:-

**1. Green Belt**

**1.1 Accepted.**

1.1.1 Our client's proposal does not breach Policy NE1 – Green Space Network. There is no wildlife, recreational, landscape and access value to be protected, promoted or enhanced. Our client's proposals will not destroy or erode the character or function of the Green Space Network.

**1.1.2 Policy NE2 – Green Belt.**

We would contend that our client's proposals meet the permitted exceptions, namely, that:-

- (a) the Development is within the boundary of the existing activity;
- (b) the Development is small scale;
- (c) the intensity of activity is not significantly increased; and
- (d) the proposed built construction is ancillary to what exists.

**1.2**

1.2.1 The Development is clearly within the boundary of the existing activity, a fact accepted by The Seven Incorporated Trades. Although not relevant to this particular exception, the proposed Development of three houses should be regarded as low density.

1.2.2 The proposed Development is small scale in comparison to the surrounding area. Due to the boundary features and topography, there will be no loss of privacy to the proposed development. As stated above, the Council have already granted planning permission in respect of Pinelands.

1.2.3 The erection of two additional dwellinghouses will not lead to a significant increase in the intensity of activity. Again due the boundary features and topography, an increase in noise, if any, would be very minimal but, nonetheless, would not impact upon any of the existing, or proposed, new frontagers.

1.2.4 Aberdeen City Council would appear to have accepted that this exception has been met by their granting of planning application 131419 in respect of Pinelands.

1.3 We would contend that it is irrelevant to compare the size of the current application site with that contained in P141260. What is relevant is whether three houses would constitute an over-development of our client's site. As opined above, our client's proposal would not constitute an over-development.

1.4 Noted.

## **2. Character of Murtle Den Road**

2.1 The character of Murtle Den Road will not be affected, or compromised, by our client's proposed development.

2.2 Our client's proposed development does not deviate from Aberdeen Local Development Plan Policy D1.

2.3 The proposed development will not detract from the character of Murtle Den Road. The three houses will be situated far enough away from each other so that there will be no adverse impact in relation to privacy, amenity, or over-shadowing. To ensure adequate privacy, a separation distance of at least 18 metres will exist between windows and the common property boundary. Each of the houses will have no more than 33% of their total curtilage area built upon, and each of the rear gardens will be at least 9 metres in length.

Our client's proposed development will not set a precedent for infill housing.

However, a precedent for further development on properties bordering Murtle Den Road has already been set by the grant of planning consent for Pinelands.

## **3. Development not Capable of Implementation**

3.1 We would respectfully contend that any potential title issues are not the concern of Aberdeen City Council.

3.2 See 3.1 above.

3.3 See 3.1 above.

3.4 See 3.1 above. Utility providers have statutory rights of access.

3.5 Any negative or suspensive conditions are a matter between the applicant and the Council and, as such, should be of no concern to The Seven Incorporated Trades.

3.6 With respect, Cook -v- Cadman 2014 S.L.T. (Lands Tribunal) 13 supports the view that the restrictions on development constitute a neighbourhood burden which neighbouring proprietors, "might" have title to enforce. It does not support the view that neighbouring proprietors have an absolute entitlement to enforce.



In Cook -v- Cadman, it was opined that "the case in favour of the owners of the three houses in Deeview Road South, Cults, keeping any benefit of the 1876 burdens over the plot (being the plot proposed for development), substantially screened by trees, etc., does not begin to get off the ground on a test of reasonableness. The impact on those three houses of likely development at the subjects, appeared to the Tribunal to be minimal or less.

Our client's proposed development will create minimal or no visual intrusion and no substantial views will be lost by the construction of the three dwellinghouses.

#### **4. Capacity of Murtle Den Road**

##### **4.1 The Seven Incorporated Trades intend to bring Murtle Den Road up to adoptable standard,**

It may well be that Aberdeen City Council will formally adopt Murtle Den Road at some point in the future.

##### **4.2 See 4.1 above.**

##### **4.3 As it is The Seven Incorporated Trades' intention to bring Murtle Den Road up to adoptable standard, it would not be equitable for our client to require to contribute to the cost of any improvements already identified, and no doubt budgeted for, prior to the submission of our client's application.**

It is believed that no similar contributions were sought in respect of Application Reference 131419 for Pinelands.

#### **5. Conclusion**

##### **5.1 The approach of The Seven Incorporated Trades with regard to the proposed development along the length of Murtle Den Road is inconsistent and their objections to our client's proposed development should not be given sufficient weight as to lead to the refusal of our client's application.**

##### **5.2 It should be noted that the only objection lodged to our client's application is from The Seven Incorporated Trades and that there are no Notices of Objection from any other other existing frontagers to Murtle Den Road.**

We would respectfully ask that the above mentioned facts and circumstances are taken into account when considering our client's application.

Yours faithfully



James & George Collie

## Paul Williamson

---

**From:** Gary Purves <Gary.Purves@knightfrank.com>  
**Sent:** 24 September 2015 10:44  
**To:** Paul Williamson  
**Subject:** RE: 151376 - Letter of Objection - Points Raised

Morning Paul

I have now spoken to Richard McDonald and he has referred me to the planning permission for Oldfold Farm (ref: P130378). I'm told that as part of this permission a condition was attached requiring Murtle Den Road to be upgraded to an adoptable standard and the Council would thereafter adopt and be responsible for the maintenance of the road. I understand that the condition requiring these details to be submitted to and approved by the Council prior to commencing on the 9 homes to the north of Murtle Den Road (block U) may still need to be purified by Trades Widows and/or CALA; however, Richard's solicitor has advised him that the upgrading and adopting of this road will resolve this right of access issue. Richard did also ask me to point out that any legal or ownership disputes are not material planning considerations and would need to be resolved by himself and any other interested parties prior to the commencement of any development.

Kind regards  
Gary

**Knight  
Frank**  
Gary Purves BLE MRTPI  
Senior Planner

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<http://www.knightfrank.co.uk/aberdeen>

Save a tree - we only print emails we need to.



---

**From:** Paul Williamson [mailto:PaWilliamson@aberdeencity.gov.uk]  
**Sent:** 23 September 2015 10:28  
**To:** Gary Purves  
**Subject:** 151376 - Letter of Objection - Points Raised

Morning Gary

Further to my two e-mails of earlier this morning, I have taken a closer look at the content of the letter of objection. Among raising matters of the principle, development plan policy, and character, it also alleges that the applicant does not have sufficient rights in order to access or service the proposed development. The submission states "Murtle Den Road, together with the verge adjacent to the roadway, is privately owner by our clients, and has not been adopted by the local authority". It goes further to state that "when our clients sold the plot ... the only rights of access which were granted were in favour of a single dwelling house. The applicants are not entitled to increase the burden on the road beyond this".

As such, while I acknowledge that ownership is not a planning issue, I would be grateful for a response on the points raised, as to how you consider that your client is capable of achieving the necessary infrastructure improvements set out by Roads. Notwithstanding the above, I still do not consider that the principle of the development has been established. I do however want to ensure that my Report of Handling covers all the necessary information.

Regards

Paul

Paul Williamson  
Senior Planner (Development Management)

Planning and Sustainable Development | Communities, Housing and Infrastructure | Aberdeen City Council  
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\*\*\*\*\*



## Paul Williamson

---

**From:** Paul Williamson  
**Sent:** 23 September 2015 10:28  
**To:** Gary Purves <Gary.Purves@knightfrank.com> (Gary.Purves@knightfrank.com)  
**Subject:** 151376 - Letter of Objection - Points Raised

Morning Gary

Further to my two e-mails of earlier this morning, I have taken a closer look at the content of the letter of objection. Among raising matters of the principle, development plan policy, and character, it also alleges that the applicant does not have sufficient rights in order to access or service the proposed development. The submission states "Murtle Den Road, together with the verge adjacent to the roadway, is privately owned by our clients, and has not been adopted by the local authority". It goes further to state that "when our clients sold the plot ... the only rights of access which were granted were in favour of a single dwelling house. The applicants are not entitled to increase the burden on the road beyond this".

As such, while I acknowledge that ownership is not a planning issue, I would be grateful for a response on the points raised, as to how you consider that your client is capable of achieving the necessary infrastructure improvements set out by Roads. Notwithstanding the above, I still do not consider that the principle of the development has been established. I do however want to ensure that my Report of Handling covers all the necessary information.

Regards

Paul

Paul Williamson  
Senior Planner (Development Management)

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Web: [www.aberdeencity.gov.uk](http://www.aberdeencity.gov.uk)



## Paul Williamson

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**From:** Paul Williamson  
**Sent:** 23 September 2015 08:28  
**To:** 'Gary Purves'  
**Subject:** RE: 151376 - Re-submission: Brookfield, Murtle Den Road, Milltimber - Erection of 3 Dwellinghouses

Morning Gary

Further to your query of yesterday, I can advise that I have received one objection to the proposals from an adjacent landowner. It may be the case that further submissions have been received, but not formally logged yet. However, on the balance of probability, I suspect that this application shall be dealt with as a delegated matter.

Yours sincerely

Paul Williamson

Paul Williamson  
Senior Planner (Development Management)

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Web: [www.aberdeencity.gov.uk](http://www.aberdeencity.gov.uk)

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**From:** Gary Purves [mailto:Gary.Purves@knightfrank.com]  
**Sent:** 22 September 2015 13:00  
**To:** Paul Williamson  
**Subject:** RE: 151376 - Re-submission: Brookfield, Murtle Den Road, Milltimber - Erection of 3 Dwellinghouses

Afternoon Paul,

I note from the planning portal that the representation period for the above application expires tomorrow. Richard McDonald has therefore asked me to contact you to ascertain whether any objections/supports have been submitted thus far – please can you advise?

Kind regards  
Gary

  
**Gary Purves BLE MRTPI**  
Senior Planner

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**From:** Paul Williamson [<mailto:PaWilliamson@aberdeencity.gov.uk>]

**Sent:** 02 September 2015 15:40

**To:** [Gary.Purves@knightfrank.com](mailto:Gary.Purves@knightfrank.com)

**Subject:** 151376 - Re-submission: Brookfield, Murtle Den Road, Milltimber - Erection of 3 Dwellinghouses

Good afternoon Gary

Please find attached, a copy of the acknowledgement letter for the above.

Please note the requirement to pay the advertisement of £65 prior to the determination of this application.

Regards

Paul

Paul Williamson  
Senior Planner (Development Management)

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## NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)  
IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)  
(SCOTLAND) REGULATIONS 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form.**  
**Failure to supply all the relevant information could invalidate your notice of review.**

**Use BLOCK CAPITALS if completing in manuscript**

**Applicant(s)**

Name RICHARD McDONALD

Address BROOKFIELD,  
MURTUE DEN ROAD,  
MILLTIMBER,  
ABERDEEN.  
AB13 0HS

Contact Telephone 1 [REDACTED]

Contact Telephone 2

Fax No

E-mail\* [REDACTED]

**Agent (if any)**

Name

Address

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

Mark this box to confirm all contact should be through this representative:

Yes  No

\* Do you agree to correspondence regarding your review being sent by e-mail?

Planning authority ABERDEEN CITY COUNCIL

Planning authority's application reference number P151376

Site address LAND AT BROOKFIELD, MURTUE DEN ROAD,  
MILLTIMBER.

Description of proposed development DEMOLITION OF AN EXISTING DWELLINGHOUSE AND  
THE ERECTION OF 3 NO. DWELLINGHOUSES.

Date of application 31/08/15 Date of decision (if any) 08/01/16

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.



**1. Nature of application**

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

**2. Reasons for seeking review**

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

**3. Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

**4. Site inspection**

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- |  | Yes                      | No                                  |
|--|--------------------------|-------------------------------------|
| 1. Can the site be viewed entirely from public land?                                 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

THE SITE IS PRIVATE GARDEN GROUND WITHIN THE CURTILAGE OF BROOKFIELD WHICH HAS AN ELECTRIC GATE FOR ENTRY.



**Statement**

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE REFER TO SEPARATE STATEMENT ATTACHED.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes  No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

**List of documents and evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

N/A.

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**Declaration**

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed 

Date 17/3/2016.



## **NOTICE OF REVIEW IN CONNECTION WITH THE REFUSAL OF PLANNING PERMISSION IN PRINCIPLE – DEMOLITION OF EXISTING DWELLINGHOUSE AND ERECTION OF 3NO. DWELLINGHOUSES ON LAND AT BROOKFIELD, MURTLE DEN ROAD, MILLTIMBER.**

### **INTRODUCTION**

This appeal relates to an application for Planning Permission in Principle for the demolition of an existing dwellinghouse (Brookfield) and the erection of 3 dwellinghouses on the land within the curtilage of Brookfield. The application subject to this appeal was submitted to Aberdeen City Council in August 2015 and subsequently refused planning permission in January 2016.

### **CHANGING CIRCUMSTANCES SINCE THE PREVIOUS APPLICATION**

The application which is subject to this appeal was made for the following reasons:

1. As a result of the neighbouring Oldfold development having commenced, the Greenbelt policy criteria is no longer relevant to the curtilage of Brookfield.
2. A full Ecological Survey and Bat Survey has been undertaken and confirms that no harm would arise to protected species from the proposed development.
3. An Energy Performance Certificate (EPC) concluded that Brookfield is no longer viable to upgrade and it requires to be replaced in order to be energy efficient.

### **REASON FOR REFUSAL**

*"The site lies within the Green Belt which is defined to protect and enhance the landscape setting and identity of urban areas and in which there is a presumption against most kinds of development with only limited exceptions. The proposed development does not comply with any of the specified exceptions to the presumption against development in the Green Belt and therefore does not comply with Policy NE2, and could erode the character or function of the Green Space Network thus conflicting with Policy NE1 of the Aberdeen Local Development Plan 2012."*

### **APPELLANT'S RESPONSE**

The curtilage of Brookfield no longer warrants the Green Belt designation given the commencement of the major residential development at Oldfold immediately adjacent to the application site.

Policy NE2 of the Local Development Plan states that proposals for development associated with existing activities in the green belt will be permitted but only if all of the following criteria are met:

- a) the development is within the boundary of the existing activity;
  - b) the development is small-scale;
  - c) the intensity of activity is not significantly increased; and
  - d) any proposed built construction is ancillary to what exists.
- In terms of point a, the proposed development is clearly within the boundary of the existing activity i.e. it is confined to within the curtilage of Brookfield.
  - In terms of point b, the development is small-scale i.e. erection of 3 houses.
  - In terms of point c, the erection of two additional houses will not lead to a significant increase in the intensity of activity.

The demolition of Brookfield and the erection of 3 houses would have no adverse impact on any of the existing properties along Murtle Den Road nor the general character of the area. The exceptions to the Green Belt policy were accepted in the granting of planning permission at Pinelands (P131419) and the same should apply to the proposed development within the curtilage of Brookfield.

## REASON FOR REFUSAL

*"If permitted, this application would create a precedent for more, similar developments to the further detriment of the objectives of the Green Belt policy."*

## APPELLANT'S RESPONSE

Planning permission was granted in July 2014 via the Local Review Body for the erection of a single dwellinghouse at Pinelands (reference P131419) which is situated to the north of Brookfield. The minutes of that meeting state that the precedent had already been set with the approval of the 9 houses as part of the Oldfold development. It was also stated that the further application at Pinelands did not create a further precedent. The application to demolish Brookfield and erect 3 houses within its curtilage does not therefore create a precedent.

The objectives of the Green Belt policy are to a) direct development to appropriate locations; b) protect and enhance the landscape character and setting; and c) provide access to open space. In terms of point a, the appeal site is an appropriate location for development given that it is confined to the curtilage of an existing dwellinghouse and is situated adjacent to the Oldfold development. In terms of point b, the site is completely hidden from public views due to the mature trees and topography of the land and there will be no adverse impact on the landscape character of the area. In terms of point c, there is no access to the appeal site as it is within private ownership.

## REASON FOR REFUSAL

*"If approved, the necessary road improvements could also result in a significant impact on the character of the area, through the provision of a widened access road, with the potential loss of a number of trees."*

## APPELLANT'S RESPONSE

Murtle Den Road will be upgraded to an adoptable standard as part of the 9 houses development to the north of Brookfield which is part of the wider Oldfold masterplan area (ref 130378). This upgrading will cover the full length of Murtle Den Road from the entrance off North Deeside Road all the way to the top of Murtle Den Road into the 9 house development. This upgrading work is a condition that has been attached to the planning permission for the 9 house development and it will include the widening of the road, pavements, street-lights and drains. These road improvements will be sufficient to serve the proposed development within the curtilage of Brookfield and the appellant is willing to accept a similar condition attached to any consent which requires this upgrading to be completed prior to the commencement of development.

## REASON FOR REFUSAL

*"Furthermore, the proposal is also considered to be contrary to the Supplementary Guidelines relating to the sub-division and redevelopment of residential curtilages, in that it would result in the creation of a secondary building line in a backland location which would erode the character and residential amenity of the area."*

## **APPELLANT'S RESPONSE**

The siting of the proposed 3 houses is indicative only given the application is merely for Planning Permission in Principle at this stage. The appellant is willing to alter the layout at the detailed application stage to ensure that "backland" development does not occur. The rationale behind the proposed layout was to ensure the houses were orientated towards Murtle Den Road to ensure they each had "a public face to the street" which is contained within the Supplementary Guidance. Furthermore, there are a number of examples varying angles and orientations within the 9-house development on Murtle Den Road and the overall 550 houses being built at Oldfold so it is unfair to suggest the proposed development would erode the character and residential amenity of the area.

### **APPELLANT'S ADDITIONAL POINTS:**

#### *1. PRINCIPLE OF DEVELOPMENT*

The appeal site does not warrant a Green Belt designation. It is private garden ground within the curtilage of a dwellinghouse and it does not meet the 3 main requirements for designating land as Green Belt as outlined above. The size of the application will not be detrimental to Policy NE2 (Green Belt) as the size of the site and its containment means the proposed development can be absorbed without adversely affecting the character of the landscape. Similarly, the proposed development would not have a significant impact on wildlife, recreation, landscape or access value and the aims of Policy NE1 (Green Space Network) would not be adversely affected.

#### *2. CONSULTATION RESPONSES*

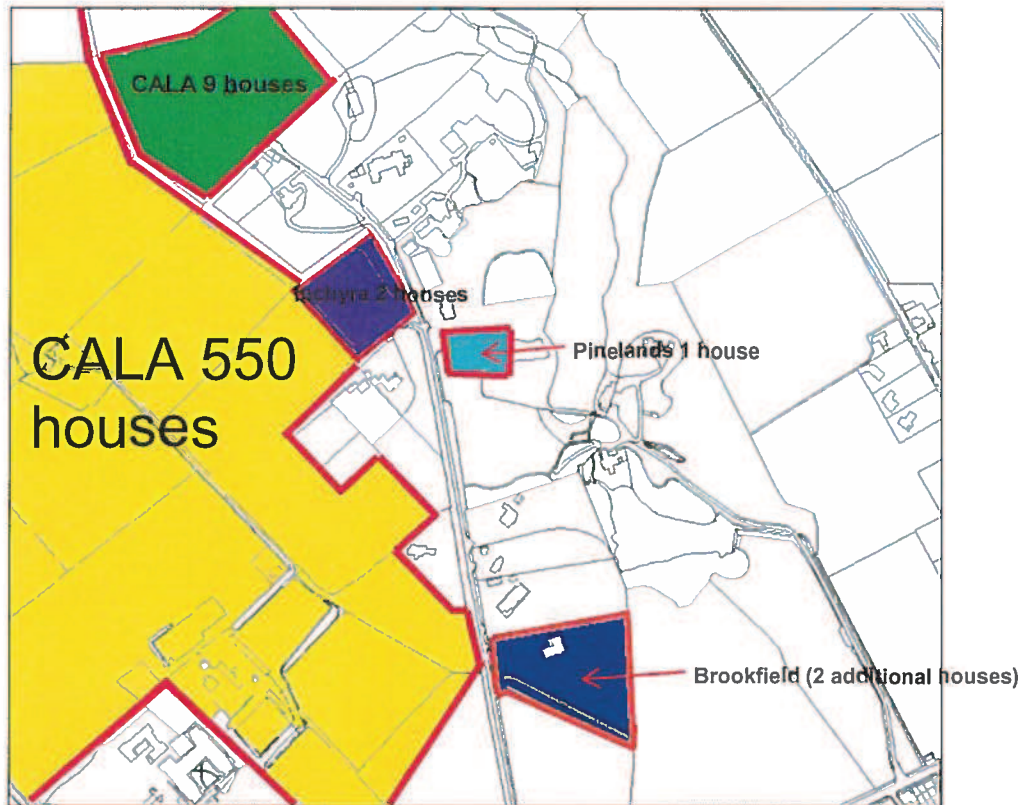
There are no objections from any of the statutory consultees. The Roads Department have confirmed that a) adequate parking spaces can be provided for each property; b) the required visibility splay onto Murtle Den Road can be achieved; and c) the upgrade of Murtle Den Road between the site access and North Deeside Road will be required.

#### *3. LETTERS OF REPRESENTATION*

One letter of representation has been received which is an objection from the neighbouring landowner who obtained planning permission for the 550 house development at Oldfold. It has been suggested that the proposed development cannot be implemented; however, the appellant has provided the Planning Service with a letter which disproves this claim, and in any case this is not a material planning consideration. Two letters of support were received which highlight that the precedent has already been set on Murtle Den Road for the erection of 9 new houses (ref 130738) and new feu split at Pinelands (ref 131419) and the erection of a further two dwellings at Inchyra (ref 120919). These representations also highlight that the proposed development will be completely hidden from North Deeside Road and will be well contained by the line of the AWPR.

#### *4. CHANGING CHARACTER OF THE AREA*

The Murtle Den Valley is already changing as a result of the massive 550 house development at Oldfold. There are also 12 additional houses to be accessed directly off Murtle Den Road as shown below. These include the 9-house development to the north as part of the Oldfold masterplan area, the 2 houses granted planning permission at Inchyra, and the 1 house granted planning permission as a feu-split at Pinelands. These houses will see the full length of Murtle Den Road brought up to an adoptable standard from the junction with North Deeside Road to the top of the road at the 9-house development as illustrated in the following map.



#### 5. LAYOUT AND DESIGN

The site layout plan that was submitted was merely indicative of how 3 houses could be accommodated on the site with generous garden ground areas not dissimilar to those existing at Treetops (0.3ha) and at Pinelands (0.7ha). The plots can be orientated differently through the detailed planning process to ensure that "backland" development does not occur should Planning Permission in Principle be granted. However, it should be noted that a number of the houses being built within the Oldfold development have varying orientations and building lines.

#### 6. DRAINAGE

A connection to the public foul drainage system would be secured through a planning condition. Surface water drainage can be addressed through a suspensive planning condition.

#### 7. TRANSPORT

Adequate parking can be provided for each plot. An appropriate visibility splay will be achieved where the appeal site joins with Murtle Den Road. Murtle Den Road will be widened as part of the 9-house development to the north and the requirement to have this done prior to the proposed development taking place can be attached as a condition.

#### 8. WILDLIFE AND PROTECTED SPECIES

The Bat Survey and Ecological Survey have both confirmed that the proposed development would not cause harm to any protected species.

#### 9. ENERGY EFFICIENCY

Brookfield is no longer energy efficient. Based on the Energy Performance Certificate completed in August 2015, the current rating of the property is F whereas the average rating for a home in Scotland

is D. Cavity wall insulation can't be done on Brookfield as it will cause major damp and health issue's due to the property's age and method of construction.

## **CONCLUSION**

Whilst the appeal site itself lies within the Green Belt the site has already been developed by the erection of Brookfield itself. The proposed development is not therefore out of character with what exists at present, particularly now that the 550 house development at Oldfold is taking place next door, and as planning permission has been granted for the creation of two houses at Inchyra (ref 120919) and a single house at Pinelands (ref 131419), and also the 9-house development at the top of Murtle Den Road.

Policy NE2 (Green Belt) allows for the type of development proposed, namely where it is within the boundary of the existing activity; where it is small-scale; where the intensity of the activity is not significantly increased; and where any built construction is ancillary to what exists. Policy NE1 (Green Space Network) would also not be adversely affected. The curtilage of Brookfield does not meet any of the criteria of Green Belt as defined by SPP, namely it is an appropriate location for development due to the Oldfold development; the site is completely hidden and does not contribute towards the landscape setting of the city; and there is no public access.

The proposed development would see the demolition of the existing property which is not energy efficient and replaced with 3 new dwellinghouses which would incorporate green technology. The site is surrounded on all four sides by mature trees in excess of 15 metres in height. The foundations of the proposed houses will be significantly below the level of Murtle Den Road. The proposed development will therefore not be visible from any public vantage point.

The full extent of Murtle Den Road will be upgraded as part of the 9-house development and this will go past the entrance to Brookfield. There have been no objections from the Roads Department and the appellants will accept a condition of the planning permission being that the upgrading of Murtle Den Road to an adoptable standard must be completed prior to the building of the 3 proposed houses.

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