

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

ABERDEEN, 12 December 2016. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor Milne, Chairperson; and Councillors Nicoll and Sandy Stuart.

**The agenda and reports associated with this minute can be found at:-**

**<http://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=284&MI d=5549&Ver=4>**

### **FLAT B, 12 SUMMERFIELD TERRACE - PROPOSED CREATION OF 2 BEDROOM FLAT WITHIN ROOF SPACE, INCLUDING FORMATION OF DORMER WINDOWS TO FRONT AND REAR ELEVATIONS (RETROSPECTIVE) - 161292**

1. The Local Review Body (LRB) of Aberdeen City Council met on this day to review the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the request for planning permission for the proposed creation of two bedroom flat within roof space, including formation of dormer windows to front and rear elevations (retrospective) at Flat B, 12 Summerfield Terrace, Aberdeen.

Councillor Milne as Chairperson gave a brief outline of the business to be undertaken. He indicated that the LRB would be addressed by the Assistant Clerk, Mr Mark Masson as regards the procedure to be followed and also, thereafter, by Mr Gavin Evans who would be acting as the Planning Adviser to the Body in the case under consideration this day.

The Chairperson stated that although the Planning Adviser was employed by the planning authority he had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. He emphasised that the officer would not be asked to express any view on the proposed application.

The Local Review Body was then addressed by Mr Masson, Assistant Clerk in regards to the procedure to be followed, at which time reference was made to the procedure note circulated with the papers calling the meeting and to certain more general aspects relating to the procedure.

In relation to the application, the LRB had before it (1) a delegated report by Mr Ross McMahon, Trainee Planner; (2) the decision notice dated 12 October 2016; (3) copies of the plans showing the proposal; (4) links to the planning policies referred to in the delegated report; (5) four letters of representation; and (6) the Notice of Review submitted by the applicant's agent along with an accompanying statement.

The LRB was then addressed by Mr Evans who advised that the submitted Notice of Review was found to be valid and submitted within the relevant timeframes.

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Mr Evans advised that detailed planning permission had been sought retrospectively for the formation of a new attic floor flat, achieved through the provision of a box dormer at the front and rear elevation of the property. He intimated that planning permission was previously granted for a proposal of the aforementioned description and that works had been completed on the site, however it had not been constructed in accordance with the consented plans and elevations.

Mr Evans referred to the reasons for refusal and indicated that the principle of creating an additional flat had been accepted by the Planning Officer, however the front dormer failed to comply with Aberdeen Local Development Plan Policies D1 (Architecture and Placemaking), aspects of H1 (Residential Areas), aspects of the Householder Development Guide Supplementary Guidance, relating to the design of dormer windows. He explained that the front dormer does not respect the scale and form of the existing property, is of size, scale and design that is considered inappropriate and visually intrusive to the streetscape and wider area generally, to the detriment of visual amenity. He intimated that no material planning considerations, including the Proposed Aberdeen Local Development Plan and matters raised in representations, would warrant approval of the application.

Mr Evans advised that four letters of support had been received and that there were no objections from consultees.

Mr Evans referred to Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) wherein it states the following:-

- that 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.

Mr Evans also made reference to the Scottish Government Planning Enforcement Charter Circular 10/2009 which advised the following:-

- retrospective applications should not be treated differently;
- use of enforcement powers is at discretion of the planning authority;
- refusal does not mean that enforcement action will necessarily be merited – enforcement based on whether it would be expedient in the public interest; and
- enforcement should always be ‘commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications’

Mr Evans outlined the key determining factors as follows:-

- is the principle of residential use acceptable in this location?;
- are the physical alterations to the building consistent with the design policies in the Plan and its associated supplementary guidance relating to dormer windows?;

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- what sort of environment would be provided for residents of the new flat?, Is this to the standard expected? (considering matters including privacy, access to garden/amenity space etc); and
- to consider whether approval would set any precedent for future developments, if approving something contrary to the Development Plan, would the planning authority be able to resist similar proposals elsewhere, what are the consequences?

The Grounds of Appeal Statement which accompanied the Notice of Review advised (a) that the development fully conforms to the content of the extant Development Plan; (b) that the reasons for refusal stated within the report of handling in relation to Policy D1 and Policy H1 are unsubstantiated and fail to consider the previously approved application on site and the subsequent completion of the works in this regard; (c) that an error in construction had resulted in a departure from the plans approved and as a result, the front dormer exists in position 500mm further forward than its consented location; (d) that the dormer remains 400mm from the wall head, a distance which is not considered as unreasonable; (e) that the appellant has expended significant monies in completing the works to a high standard and dismissal of the appeal would result in greater costs being incurred through further works to resolve a minor departure from the approved plans; and (f) that there were no objections from consultees and four representations were received in support of the application.

The delegated report advised that the stated reason for refusal of planning permission was as follows:-

The principle of creating an additional residential unit in this location is considered to be acceptable and compliant with the provisions of Policy D2 and aspects of H1 of the Aberdeen Local Development Plan. However, the front dormer as constructed, fails to comply with the relevant policies of the Aberdeen Local Development Plan 2012, namely Policies D1 (Architecture and Placemaking) and aspects of H1 (Residential Areas), in addition to aspects of the dormer design guide contained within the Council's Supplementary Guidance: Householder Development Guide, in that the proposed front dormer has not been designed to respect the scale and form of the existing property and is of a size, scale and design that is considered to be inappropriate and visually intrusive to the streetscape and wider area generally, to the detriment of visual amenity. 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. Full regard has been given to all matters raised in representations, but neither do they outweigh the policy position as detailed above, nor do they justify approval of the application.

The Local Review Body then asked a number of questions of Mr Evans.

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The Local Review Body thereupon agreed that the review under consideration should be determined without further procedure. The members of the Local Review Body therefore agreed that a site visit, a hearing session nor further written representations were required, as members felt they had enough information before them.

**Members unanimously upheld the decision of the appointed officer to refuse the application.**

In coming to their decision, the Local Review Body had regard to the provisions of the Development Plan as required by Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which required that where, in making any determination under the planning acts, regard was to be had to the provisions of the development plan and that determination should be made in accordance with the plan, so far as material to the application, unless material considerations indicated otherwise.

More specifically, the reasons in which the Local Review Body based this decision were as follows:-

The principle of creating an additional residential unit in this location is considered to be acceptable and compliant with the provisions of Policy D2 and aspects of H1 of the Aberdeen Local Development Plan. However, the front dormer as constructed, fails to comply with the relevant policies of the Aberdeen Local Development Plan 2012, namely Policies D1 (Architecture and Placemaking) and aspects of H1 (Residential Areas), in addition to aspects of the dormer design guide contained within the Council's Supplementary Guidance: Householder Development Guide, in that the proposed front dormer has not been designed to respect the scale and form of the existing property and is of a size, scale and design that is considered to be inappropriate and visually intrusive to the streetscape and wider area generally, to the detriment of visual amenity. 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. Full regard has been given to all matters raised in representations, but neither do they outweigh the policy position as detailed above, nor do they justify approval of the application.

**1 CAIRNVIEW CRESCENT - PROPOSED DORMERS TO FRONT OF THE ANCILLARY BUILDING (RETROSPECTIVE) - 160640**

2. The Local Review Body then considered the second request for a review to evaluate the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the request for planning permission for proposed dormers to the front of the ancillary building (Retrospective) at 1 Cairnview Crescent, Aberdeen.

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The Chairperson advised that the LRB would now be addressed by Mr Paul Williamson and stated that although the Planning Adviser was employed by the planning authority he had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. He emphasised that the officer would not be asked to express any view on the proposed application.

In relation to the application, the Local Review Body had before it (1) a delegated report by Ms Sepideh Hajisoltani, Trainee Planner; (2) the decision notice dated 22 August 2016; (3) plans showing the proposal; (4) links to the planning policies referred to in the delegated report; and (5) the Notice of Review submitted by the applicant's agent along with an accompanying statement.

Mr Williamson advised that the submitted Notice of Review was found to be valid and submitted within the relevant timeframes.

Mr Williamson provided a brief description of the application and advised that the appeal relates to the refusal of planning permission for the retrospective formation of two dormer windows to the front elevation of an ancillary building to the rear of 1 Cairnview Crescent, Aberdeen. He indicated that the existing property was of pink granite construction with a slate roof and the footprint of the existing 1½ storey semi-detached dwelling covered approximately 89 square metres.

Mr Williamson made reference to the delegated report and intimated that the proposal sought to obtain permission retrospectively for the formation of two dormers onto the east facing roof plane of an ancillary building previously approved under application 150474. In that application, the floor area of the replacement garage was 70.56 square metres, with accommodation on the upper floor accessed via an external stair on the northern gable. The floor plans indicate that the upper floor could be used as a gym/office, ancillary to the existing dwellinghouse. In order to provide light to this area, two, double rooflights were shown on the plans. The materials for the approved ancillary building were grey dry dash render, slate roof, and a UPVC roller door to the garage element, and a timber doors.

Mr Williamson advised that it was identified that the amendment of the proposals to form two dormer windows could not be considered Non Material Variation, and an application requested to consider the proposals further.

Mr Williamson then referred to the Decision Notice and advised that the application was refused on the grounds that the proposal fails to comply with Policies D1 and H1 of the Aberdeen Local Development Plan, in light of the proposal not demonstrating due regard for the design and context of the surrounding area, and as a result, the proposed development would appear out of context thus having a negative impact on the visual amenity of the surrounding area. Furthermore, it was also considered that the dormer windows would compromise the privacy of neighbouring properties due to overlooking.

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Mr Williamson then referred to the matters raised in the Notice of Review statement which advised:-

- that the provision of the dormers was to enhance the use of the upper floor room. It is contested that the dormers do not make the overlooking situation any worse;
- that at the time of confirming that a new application would be required, the Planning Authority at no time, indicated that the proposal would be viewed as contrary to policy;
- that no decision was made within the 2 month period for determination, and the only formal correspondence received was the refusal notice;
- that the policies referred to in the refusal notice are subjective;
- that in respect of design, scale and massing - The dormers would only be partially visible from Cairnview Crescent, which would diminish any potential 'dominant appearance';
- that turning to residential amenity - Velux windows would produce the same degree of visibility as the dormers would. Furthermore, an existing dormer window to the southern roof hip already overlooks No. 94 Cairncry Road, and poses more of an overlooking than the proposed dormers, and a rear (west) facing dormer on the house also overlooks No. 3 Cairnview Crescent – therefore the overlooking issue should be dismissed as insignificant;
- that no objections were received from neighbouring properties. However, it should be noted by the Local Review Body that initially an objection was received by a neighbour on Cairncry Road, as evidenced on Page 87 of the papers, although it was subsequently withdrawn; and
- that there are other instances where domestic garages have dormers.

Mr Williamson indicated that the relevant considerations were (a) in respect of the Aberdeen Local Development Plan (2012), Policies H1 (Residential Areas) and D1 (Architecture and Placemaking), which are effectively reiterated through the Proposed Local Development Plan; and (b) the Supplementary Guidance relating to the Householder Development Guide.

In conclusion, Mr Williamson advised that the LRB needed to assess the proposal against the policies of the Development Plan, and the other material considerations identified such as the Councils Supplementary Guidance relating to Householder Developments. The principle considerations in this instance, is whether the proposal would have any adverse impact upon neighbouring residential amenity via overlooking, and the visual amenity of the wider area.

The Local Review Body then asked a number of questions of Mr Williamson.

The Local Review Body thereupon agreed that the review under consideration should be determined without further procedure. The members of the Local Review Body therefore agreed that a site visit, a hearing session nor further written representations were required, as members felt they had enough information before them.

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**Members unanimously upheld the decision of the appointed officer to refuse the application.**

In coming to their decision, the Local Review Body had regard to the provisions of the Development Plan as required by Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which required that where, in making any determination under the planning acts, regard was to be had to the provisions of the development plan and that determination should be made in accordance with the plan, so far as material to the application, unless material considerations indicated otherwise.

More specifically, the reasons in which the Local Review Body based this decision were as follows:-

The proposed dormers to the front of the ancillary building are not in compliance with Policy D1 (Architecture and Placemaking) and Policy H1 (Residential Areas) of the Aberdeen Local Development Plan 2012. The proposal does not demonstrate due regard for the design and context of the surrounding area and as a result the proposed development would appear out of context and would have a negative impact upon the visual amenity of the surrounding area and also compromise the privacy of neighbouring properties due to unacceptable level of overlooking from the dormers. On this basis, it is considered that the proposal does not accord with the provisions of the Development Plan and that there are no material planning considerations – including the Proposed Aberdeen Local Development Plan – that would warrant approval of the application.

**25-29 QUEEN'S ROAD - PROPOSED DWELLING HOUSE WITH ASSOCIATED PARKING - 160507**

3. The Local Review Body then considered the third request for a review to evaluate the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the request for planning permission for a proposed dwelling house with associated parking at 25-29 Queen's Road, Aberdeen.

The Chairperson advised that the LRB would again be addressed by Mr Paul Williamson and reminded those in attendance that although the Planning Adviser was employed by the planning authority he had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. He emphasised that the officer would not be asked to express any view on the proposed application.

In relation to the application, the Local Review Body had before it (1) a delegated report by Ms Jane Forbes, Planner; (2) the decision notice dated 13 September 2016; (3) plans showing the proposal; (4) links to the planning policies referred to in the

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delegated report; and (5) the Notice of Review submitted by the applicant's agent along with an accompanying statement.

Mr Williamson advised that the submitted Notice of Review was found to be valid and submitted within the relevant timeframes.

Mr Williamson provided a brief description of the application and advised that the appeal relates to the refusal of planning permission for a proposed dwelling house with associated car parking at the rear of 25-29 Queen's Road. The existing property is Category C Listed, within the Albyn Place/Rubislaw Conservation Area, and of traditional construction. The main dwelling is split into three flats, and following a grant of planning permission (Ref: 151798) is currently in the process of being extended by two storeys to the rear to form an additional 2 flatted properties. The wider curtilage of the existing property extends to some 1800 square metres, while the site area for the appeal site is approximately 206 square metres

Mr Williamson referred to the delegated report and indicated that the proposals sought to erect a single storey mews style dwelling of two bedrooms within the south east most corner of the site. The development would be accessed from Queens Lane South, with a 1.8 metre high traditional rubble boundary wall forming the southern boundary of the site. The western boundary would be formed by another rubble wall varying between 1.1 and 1.4 metres in height, and two car parking spaces would be located to the north of the proposed dwelling. In respect of materials, external walls would be of natural granite, with roof clad in slate. Windows would be aluminium frames painted dark grey, with stone cills.

Mr Williamson then referred to the Decision Notice and advised that the application was refused on the grounds that the proposed development would result in the subdivision of an existing residential plot, which would not be in keeping with the established density and pattern of development in the area. The Planning Authority considered that the proposal would constitute backland development, and would fail to provide a public face to a street, with uncertainty surrounding long term access arrangements. As a result, the Authority considered that the proposal would also be significantly harmful to the wider Conservation Area.

Mr Williamson intimated that it was noted in the reason for refusal that the general design, scale and finishing were suitable, that those elements did not outweigh the issue of the principle of the development. As such, the proposal was considered to be contrary to Policies D1 Architecture and Placemaking; D2 (Design and Amenity); B13 West End Office Area; D5 Built Heritage of the Local Development Plan. In addition it was also considered to contravene Scottish Planning Policy, and the Supplementary Guidance relating to the sub-division and redevelopment of residential curtilages.

Mr Williamson then referred to the matters raised in the supporting statement to the Notice of Review which advised:-



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- that the appellant considers that the concerns regarding the redevelopment of a residential curtilage are not relevant in this instance, as the site relates to a redundant two storey garage;
- that the proposed replacement low level development along an established building line is in keeping with the character of the area, with no objection from the Roads Department;
- that the Conservation Area appraisal identifies that there is a low-level building line along Queen's Lane South, thus it does have a public face to the street;
- that concerns over long term access have been addressed, and a right of access would be reserved; and
- that the proposals shall replace a dilapidated garage with a single storey mews property of sensitive design and materials, which shall have a positive impact on the character of the area, which would be seen against the backdrop of the modern flatted extension.

Mr Williamson advised that the relevant considerations were (1) the Development Plan – Aberdeen Local Development Plan (2012), Policy B13 (West End Office Area), Policy D1 (Architecture and Placemaking), Policy D2 (Design and Amenity), Policy D5 (Built Heritage); (2) the Supplementary Guidance relating to the Sub-division and Redevelopment of Residential Curtilages; and (3) the Albyn Place/Rubislaw Conservation Area Appraisal.

In conclusion Mr Williamson advised that the LRB needed to assess the proposal against the policies of the Development Plan, and the other material considerations identified such as the Councils Supplementary Guidance relating to the Sub-division of Residential Curtilages and the Conservation Area appraisal for Albyn Place/Rubislaw. The principle considerations in this instance are whether the proposal would constitute an acceptable form of development, and whether it would sub-divide an existing residential feu or part of an original planned development layout. Furthermore, consideration must also be given to the form of development and whether it would comply with the requirements of Policy D2 in having a public face to the street, and the other requirements of the aforementioned Supplementary Guidance relating to Sub-division, and ultimately the impact on the character and layout of the wider area including the Conservation Area.

The Local Review Body then asked a number of questions of Mr Williamson.

The LRB thereupon agreed that the review under consideration should be determined without further procedure. The members of the Local Review Body therefore agreed that a site visit, a hearing session nor further written representations were required, as members felt they had enough information before them.

The LRB did not agree that there was problems surrounding long term access arrangements to the development.

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**Members unanimously upheld the decision of the appointed officer to refuse the application.**

In coming to their decision, the Local Review Body had regard to the provisions of the Development Plan as required by Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which required that where, in making any determination under the planning acts, regard was to be had to the provisions of the development plan and that determination should be made in accordance with the plan, so far as material to the application, unless material considerations indicated otherwise.

More specifically, the reasons in which the Local Review Body based this decision were as follows:-

The proposed development would result in the subdivision of an existing residential plot, and would not be in-keeping with the established density and pattern of development in the area. Constituting backland development, it would fail to provide a public face to a street. The impact of such development would not only be considered inappropriate for its residential context, but would be significantly harmful to that of the wider Albyn Place/ Rubislaw Conservation Area. Whilst the proposal offers suitable individual merits by way of design, scale and finishing, these are not considered of exceptional quality to outweigh the issue of principle in this instance. As such, the principle of development fails to comply with Policy D1 (Architecture & Placemaking), Policy D2 (Design & Amenity) and Policy BI3 (West End Office Area) of the Aberdeen Local Development Plan 2012; the Council's Supplementary Guidance on the Subdivision of Residential Curtilages; Scottish Planning Policy and Historic Environment Scotland policy and guidance with respect of development within Conservation Areas; and subsequently Policy D5 (Built Heritage) of the Aberdeen Local Development Plan 2012. Approval of such development may set an undesirable precedent for future applications of a similar nature, which could lead to the fundamental erosion of the character and amenity of the surrounding area. There are no material considerations identified, including evaluation under the Proposed Aberdeen Local Development Plan 2016, that would outweigh the above policy position or justify approval of the application.

- **COUNCILLOR RAMSAY MILNE, Convener**

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