

## LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 13 June 2017. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL.

Present:- Councillor Donnelly, the Depute Provost, Chairperson; and Councillors Cooke and Mason.

**The agenda and reports associated with this minute can be found at:-**  
<HTTPS://COMMITTEES.ABERDEENCITY.GOV.UK/IELISTDOCUMENTS.ASPX?CID=284&MID=5734&VER=4>

### **CHANGE OF USE FROM AMENITY LAND TO GARDEN GROUND AND ERECTION OF FENCE ROUND BOUNDARY AT 29 SEAVIEW AVENUE ABERDEEN - 161787**

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 change of use from amenity land to garden ground and the erection of a fence round the boundary at 29 Seaview Avenue, Aberdeen, 161787.

Councillor Donnelly as Chairperson gave a brief outline of the business to be undertaken. He indicated that the LRB would be addressed by the Assistant Clerk, Mrs Lynsey McBain as regards the procedure to be followed and also, thereafter, by Mr Andrew Miller 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 Mrs McBain, 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 Roy Brown, Planner; (2) the decision notice dated 7 April 2017; (3) copies of the 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 along with an accompanying statement.

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

Mr Miller explained that the site subject to the review covers an area of amenity space to the east of the boundary of 29 Seaview Avenue with amenity land and the

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surrounding area is a relatively modern residential development, although there is industrial land to the east. Mr Miller indicated that the amenity land acted as a buffer between the residential and industrial land.

Mr Miller indicated that the application sought consent for the change of use of the amenity land and its enclosure to form extended garden ground and during consideration of the application, the development was part implemented though works have since stopped.

Mr Miller outlined that the request sought the review of the decision of the appointed officer to refuse the application under delegated powers and the stated reasons for refusal were as follows:-

There would be a loss of urban green space which would be contrary to policy NE3 – Urban Green Space of the Aberdeen Local Development Plan, on the basis it would impede on the open setting of the nearby path and end of Seaview Avenue making it less inviting and safe to use. It would also set a precedent, resulting in incremental erosion to the path and larger green space and a subsequent loss of amenity and recreational value currently offered. It was considered to be contrary to the requirements of the ALDP policies H1 – Residential Areas, D1 – Quality Placemaking by Design, D2 – Landscape, T3 – Sustainable and Active Travel and NE9 – Access and Informal Recreation and the householder development guidance. There would be erosion of the Green Space Network which would be contrary to NE1 – Green Space Network and the removal of trees in the amenity space was considered to be contrary to policy NE5 – Trees and Woodlands.

In regards to consultees and objections, Mr Miller advised that no letters of objection were received.

Mr Miller also made reference to the relevant planning considerations, as follows:-

- NE3 – Urban Green Space
- NE1 – Green Space Network
- H1 – Residential Areas
- Householder Development Guide
- D1 – Quality Placemaking by Design
- D2 – Landscape
- T3 – Sustainable and Active Travel
- NE9 – Access and Informal Recreation

In relation to the Notice of Review, the applicant highlighted that (a) the land was relatively small, (b) the path is an informal dirt footpath, (c) the land was in a generally overgrown state with poorly maintained shrubs and a single ash tree, (d) the path adjacent to the site was the only part of the path in the area that had a 3-4 metre strip between the house and the path, the rest of the path has narrower strips,(e) there is additional land on the other side of the path which maintains an open aspect on the

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path, (f) there is no loss of habitat or natural SuDs features and no loss of visual amenity and (g) there would be no adverse impact on road safety.

The Local Review Body asked a number of questions of Mr Miller.

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.

Mr Miller highlighted that when determining the appeal, members should take into consideration any material considerations they feel would be relevant to the application that would point to either overturning the original decision or dismissing the review.

**Members agreed by majority to overturn the decision of the appointed officer to refuse the application and therefore approve the application. Councillors Cooke and Mason voted to overturn the decision of the appointed officer and approve the application and Councillor Donnelly voted to uphold the decision of the appointed officer and 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:-

They did not feel that the proposed change of use would be contrary to Policy NE3, - Urban Green Space of the adopted Aberdeen Local Development Plan 2017 (ALDP), as it would not result in the significant loss of character and amenity of the surrounding area. The development would enhance the amenity of the area, by tidying up an unkept piece of amenity land and although there would be a loss to the urban green space, which is of amenity and recreational value to the public, there would be no significant erosion of amenity provision. This also ensured compliance Policy NE1 – Green Space Network of the ALDP, as well as Policy H1 – Residential Areas and The Householder Development Guide Supplementary Guidance.

### **REPLACEMENT DWELLINGHOUSE AND GARAGE AT AUCHINYELL, 3 PROSPECTHILL ROAD ABERDEEN - 161381**

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

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Delegation, to approve the application conditionally for the replacement dwellinghouse and garage at Auchinyell, 3 Prospecthill Road Aberdeen. The applicant wished to appeal and remove condition six.

The Chairperson advised that the LRB would be addressed by Mr Gavin Evans and reminded members 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 LRB had before it (1) a delegated report by Mr Andrew Miller, Senior Planner; (2) the decision notice dated 24 February 2017; (3) copies of the plans showing the proposal; (4) links to the planning policies referred to in the delegated report; (5) comments received from consultees and (6) the Notice of Review submitted by the applicant along with an accompanying statement.

Mr Evans explained that the site subject to the review comprises a 1 ½ storey house with hipped roof and relatively large garden ground fronting Prospecthill Road. The surrounding area is residential with a mix of house types, the majority of which are detached and set in generous gardens.

Mr Evans indicated that the application sought consent for the demolition of the existing house and erection of a larger replacement house, along with a detached garage to the rear, accessing onto Baillieswells Terrace.

Mr Evans outlined that the request sought the review of the decision of the appointed officer to approve the application conditionally under delegated powers and sought the removal of condition six, which was as follows:-

That notwithstanding the provisions of Article 2(4), Schedule 1, Part 1, Classes 1A, 1B, 1C, 1D, 3A and 3B of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, no extensions, alterations or improvements which materially affect the external appearance of the dwellinghouse, nor any means of enclosure shall be erected or carried out either on, or in the curtilage, of the dwellinghouse hereby approved without a further grant of planning permission from the planning authority – in the interests of visual amenity.

In regards to consultees and objections, Mr Evans advised that three letters of representations were received; one objection and two neutral. In regards to statutory consultees, Roads Development Management and the Flooding and Coastal Protection team submitted comments on the application but did not object.

Mr Evans also made reference to the relevant planning considerations, as follows:-

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- H1 – Residential Areas: seeks to ensure that all development is suitable for the character and amenity of the surrounding area, as well as general compatibility with residential uses.
- D1 – Quality Placemaking by Design: requires development to be of a high standard of design.
- T2 – Managing the Transport Impact of Development
- NE5 – Trees and Woodlands
- NE8 – Natural Heritage

Mr Evans explained that conditions attached to planning applications must meet six tests. Conditions must be:-

1. Necessary
2. Relevant to planning
3. Relevant to the development to be permitted
4. Enforceable
5. Precise; and
6. Reasonable in all other aspects.

In relation to the Notice of Review, the applicant highlighted that (a) the size of the garage was reduced by 33% from the original submission and the site coverage was reduced to 26%, (b) it would be safer to access the family car from a driveway at the rear of the property, than at the front on the pavement and (c) the main garden area would be south facing but an there would be an allocated appropriate useable garden space at the north facing part too.

The Local Review Body asked a number of questions of Mr Evans whereby it was noted that should condition six not be in place, it would allow for variations to the application such as an extension and the reorientation of the proposed garage.

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.

Mr Evans highlighted that when determining the appeal, members should take into consideration any material considerations they feel would be relevant to the application that would point to either overturning the original decision or dismissing the review.

**Members agreed by majority to uphold the decision of the appointed officer to apply condition six to the application and therefore refuse the appeal. Councillors Cooke and Mason voted to refuse the appeal and uphold the decision of the appointed officer. Councillor Donnelly voted to overturn the decision of the appointed officers and remove condition six.**

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

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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:-

They felt that the proposed condition was necessary and relevant to the planning application, and should remain in place. However they noted that other options were available to the applicant in relation to condition 6. The Local Review Body felt that as the proposed building was larger than the one being replaced, that the condition was necessary and reasonable and encouraged the applicant to undertake one of the other options available to them in regards to condition 6.

The various mechanisms referred to at the Local Review Body were as follows:-

1. Non-material Variation to an existing planning permission, under section 64 of the Planning Act.

This is an informal mechanism, for which there is no specific application form. The planning authority's powers are discretionary, and may be used to allow minor revisions to a consent previously granted, provided that, in the view of the planning authority, those changes are not material. A letter or email, providing details of the changes sought and sufficient information to allow the original consent to be identified, along with drawings demonstrating the areas subject to change, will be required.

2. Further application for a proposal of the same character or description, made by the same applicant, in relation to the same site, within 1 year of an earlier approval.

Provided these criteria are satisfied, no further fee will be payable in relation to a further application. In the event that the planning authority does not agree to a non-material variation under s64, this would be the next option, whereby an entirely new determination is sought in relation to the revised proposal. Please note that any such further application would be determined with due regard for the provisions of the Development Plan and any other material considerations identified, and would be referred to committee only where required under the terms of the relevant scheme of delegation.

3. Application under s42 of the Planning Act, to vary or remove a planning condition.

This is a formal application whereby an applicant may seek to have a planning condition attached to an earlier consent either removed or altered.

- **Councillor Alan Donnelly, Chairperson**

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