

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 20 November 2017. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor Jennifer Stewart, Chairperson; and Councillors Cameron, Copland, John and Nicoll.

GROUNDS OF DUNLIN, DALMUINZIE ROAD, BIELDSIDE, ABERDEEN - ERECTION OF HOUSE AND GARAGE WITH ASSOCIATED GARDEN GROUND - 170646

11. 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 erection of a house and garage with associated garden ground at Grounds of Dunlin, Dalmuinzie Road, Bielside, Aberdeen, Planning Reference 170646.

Councillor Jennifer Stewart as Chairperson gave a brief outline of the business to be undertaken. She indicated that the LRB would be addressed by the Assistant Clerk, Mr Mark Masson with regards to 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 three cases 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. She 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 more general aspects relating to the procedure.

In relation to the application, the LRB had before it (1) a delegated report by Ms Jane Forbes, Planner; (2) the decision notice dated 27 July 2017; (3) copies of various plans and photographs showing the proposal; (4) links to the planning policies referred to in the delegated report; (5) letters of representation; and (6) the application and Notice of Review submitted by the applicant along with an accompanying statement and further information relating to the application.

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. He also indicated that the appellant had requested that the LRB undertake a site inspection as a further procedure due to site specific circumstances.

At this juncture, the Chairperson moved that a site inspection be undertaken in order to assess the area of the application fully and to better evaluate the issue in relation to the trees on site. Councillors Cameron, Copland, John and Nicoll all indicated that they each had enough information before them and therefore agreed that a site visit was not

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required and that the review under consideration should be determined without further procedure.

Mr Miller advised that the site forms an area of the grounds of Dunlin, a detached house set in extensive grounds in Bielside. It was located within a residential area, as zoned in the Aberdeen Local Development Plan 2017. It was also within the Green Space Network zoning. The surrounding area was typified by relatively large, detached house set in generous garden grounds, many of which contain established trees that form part of ancient/semi-natural woodland and was covered by a Tree Preservation Order.

He indicated that the application sought consent for the erection of a house with detached garage, access/driveway, drainage and landscaping.

He explained that the request sought the review of the decision of the appointed officer to refuse the application under delegated powers. In refusing the application, the reasons given were as follows:-

- there would be an unacceptable adverse impact on the woodland character and recreational and wildlife value of the area, within the Green Space Network and a wider wooded area;
- constrained within site in close proximity to mature and semi-mature trees and the potential impact of the proposed development might result in severe damage or loss of trees covered by a Tree Preservation Order and formally recognised as Ancient, Long-established and Semi-natural Woodland; and
- accordingly the proposals were considered to be contrary to Scottish Planning Policy, H1 (on basis that it fails to comply with Supplementary Guidance on Sub-division, landscape and trees), D1 – Quality Placemaking by Design, D2 – Landscape, NE1 – Green Space Network. It would also fail to comply with Scottish Government's Control of Woodland Removal Policy.

Mr Miller made reference to the appellant's case, advising that there were several comments within the Notice of Review Statement that cannot be taken into consideration. This related to how the application was determined which was not for the LRB to take into consideration, namely, allegations that the officer did not visit the site and the case officer refusing to have additional meetings at the request of the applicant/agent. He explained that the LRB should determine the application on a de novo basis, i.e. consider the proposals afresh with respect to the development plan and material considerations.

Mr Miller indicated that the Review Statement indicated that the proposal was not overdevelopment, would not have a detrimental impact on the residential amenity of neighbouring properties, the site could accommodate the development and would accord with Policy H1. Furthermore the Statement advised that there would not be an unacceptable loss of tree cover, there would be no adverse impact on road safety (as

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highlighted in letters of objection) and the level of drainage provided to the site would be satisfactory.

Mr Miller outlined the history of the site, indicating the following:-

- that the site was covered by a Tree Preservation Order that had been in place since 1972;
- that an application for the erection of a new house in the grounds of Dunlin was withdrawn in 2009, following a recommendation of refusal to the Planning Development Management Committee;
- that in 2012, permission was granted for the removal of 52 trees (many of which were dead/dying). This was on the agreement that 2 for 1 replacement planting was carried out;
- that in 2013, permission was granted for the removal of 3 trees;
- that in 2015, permission was granted for the removal of 28 trees and work to 15 trees for health and safety reasons. Replacement planting was required on a 2 for 1 basis;
- that in 2016, permission was refused for the removal of a Douglas fir tree; and
- that an application for the erection of a house on this site was refused under delegated powers in November 2016.

In relation to consultations and objections, Mr Miller advised that there were four letters of objection received in respect of this application. In summary, the points raised were:-

- that access arrangements were unsafe on a narrow, private road that cannot accommodate additional traffic;
- Drainage concerns – whereby removal of trees had increased the run off of rainwater, and there was potential risk of contamination to watercourses from proposed drainage arrangements. Existing drainage arrangements in the area were problematic;
- Trees – loss of Protected Trees had created an un-natural clearing that had been formed over time to accommodate a dwelling in ancient and natural woodland. There would be potential for adverse impact on existing trees should the house be permitted; and
- there would be potential for an undesirable precedent and no change in circumstances from previous refusal on site.

Mr Miller advised that Roads Development Management had no objections and that the Flooding Team had no objections following provision of additional information.

Mr Miller made reference to the relevant Policy considerations as follows:-

H1 – Residential Areas:

- Residential development was acceptable in principle on the basis that it complied with Supplementary Guidance and did not result in an adverse impact on established residential amenity;

NE1 – Green Space Network:

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- Development that is likely to erode character or function of the GSN would not be permitted;
- D1 – Quality Placemaking by Design:
- Required all development to be of a high standard of design;
- T2 – Managing the Transport Impact of Development:
- Development should minimise traffic generated and maximise opportunities for sustainable and active travel;
- NE5 – Trees and Woodlands:
- There would be a presumption against development that results in damage to trees that contribute to landscape character, nature conservation and local amenity; and
- Scottish Government Control of Woodland Removal Policy:
- Presumption against removal of ancient woodland.

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

Mr Miller also intimated that should members wish to overturn the decision of the appointed officer, consideration should be given to any conditions which would be appropriate in order to make the proposal acceptable. However all conditions must meet the six tests set out by Scottish Government policy.

Mr Miller indicated that if members were minded to overturn the decision then he would advise placing conditions requiring the following:-

- Samples of external material finishes of the development;
- Boundary Treatment details; and
- Conditions relating to the implementation of tree protection measures outlined in supporting documents.

The Local Review Body then asked questions of Mr Miller, specifically regarding tree felling and replacement planting.

Members agreed by majority to uphold the decision of the appointed officer to refuse the application.

Councillors Cameron, Copland and Nicoll voted to uphold the decision of the appointed officer to refuse the application. The Chairperson and Councillor John voted to overturn the decision of the appointed officer and approve 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 of the Town and Country Planning (Scotland) Act 1997 (as amended) and other material considerations in so far as these were pertinent to the determination of the application.

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

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1. The proposed development is unacceptable in terms of the adverse impact it would have on the woodland character and recreational and wildlife value of this section of Dalmuinzie Road which lies within the Green Space Network, and that of the wider woodland area. The proposed dwelling would be extremely constrained within the site, given its proximity to semi-mature and mature trees. If the proposal were to be approved, both the impact of the construction work on the trees, and the potential impact of the trees on the dwelling and associated garage building would result in either the loss or severe damage of trees on this site. As such the proposal would support neither the protection nor the enhancement of the natural landscape, and would bring added pressure to the remaining woodland which is protected by TPO No 26 and formally recognised as Ancient, Long-established and Semi-natural Woodland. Whilst addressing the requirements of Policy T2 (Managing the Transport Impact of Development) and Policy R7 (Low and Zero Carbon Buildings, and Water Efficiency) of the Aberdeen City Local Development Plan, the proposal would only partially comply with Policy NE6 (Flooding, Drainage and Water Quality) and ACC's Supplementary Guidance on Flooding, Drainage and Water Quality; and would not fully address the requirements of Scottish Government's 'Control of Woodland Removal' Policy. The proposal would be contrary to SPP, and to Policies H1 (Residential Areas), D1 (Quality Placemaking by Design), D2 (Landscape), NE1 (Green Space Network), and NE5 (Trees and Woodland) of the Aberdeen City Local Development Plan; and would fail to accord with the requirements of the Council's supplementary guidance on 'The Sub-division and Redevelopment of Residential Curtilages', 'Landscape' and 'Trees and Woodlands'.
2. That the proposal, if approved, would set an undesirable precedent for applications of a similar nature that would seriously erode the landscape quality and character of the surrounding area.

12 SEAVIEW PLACE, ABERDEEN - CHANGE OF USE FROM PUBLIC AMENITY SPACE TO DOMESTIC GARDEN GROUND (RETROSPECTIVE) AND ERECTION OF TIMBER FENCE - 170693

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 the proposed change of use from public amenity space to domestic garden ground (retrospective) and erection of timber fence at 12 Seaview Place, Aberdeen, Planning Reference 170693.

The Chairperson advised that the LRB would again be addressed by Mr Andrew Miller 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

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information and guidance to the Body only. She 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 Robert Forbes, Senior Planner; (2) the decision notice dated 21 July 2017; (3) plans showing the proposal; (4) links to the planning policies referred to in the delegated report; (5) letters of representation; and (6) the application and Notice of Review submitted by the applicant's agent along with an accompanying statement.

Mr. Miller advised that the submitted Notice of Review was found to be valid and submitted within the relevant timeframes. He also indicated that the appellant had requested that the LRB undertake a site inspection as a further procedure.

Mr. Miller advised that the site was an area of amenity ground that formed a buffer between the garden fence and public road. It had since been enclosed and incorporated into garden ground (retrospective) but the proposed position would be 1.5 metres inward.

He explained that consent was sought for the change of use of the amenity land to residential and the erection of a 1.8m high fence with a 1.5m buffer strip of landscaping/planting.

Mr Miller indicated that the request sought the review of the decision of the appointed officer to refuse the application under delegated powers. In refusing the application, the reasons given were as follows:-

- Visually dominant, loss of buffer strip of amenity space;
- Blocks visibility splay; and
- Creation of precedent for similar proposals.

It was therefore considered to be contrary to policy H1, NE3, D1, NE5.

Mr Miller made reference to the appellant's case advising that the Notice of Review Statement outlined the following:-

- that the fence was at lower level than the public road, and therefore was not so dominant;
- that the visibility splay required for the junction was not impacted on (2.4 x 70 metres);
- that the area was an unkempt mess by the factor; and
- that there was examples of precedent.

Mr Miller intimated that the appellant's future plans for extending their property was not a consideration for the LRB.

In relation to consultations and objections, Mr Miller advised that one letter of objection was received, which raised concerns on public safety and inadequate ground maintenance due to the position of the fence. Roads Development Management objected to the application due to impact on visibility at the junction of Seaview Avenue

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with Dubford Road (required visibility splay of 4.5 x 90 metres as it was a local distributor road).

The appellant had requested a site visit be carried out prior to determination.

The members of the Local Review Body agreed that there was no requirement for a site visit as they felt that they had enough information before them. The Local Review Body thereupon agreed that the review under consideration should be determined without further procedure.

Mr Miller made reference to the relevant Policy considerations as follows:-

H1 – Residential Areas:

- Residential development was acceptable in principle on basis it complied with Supplementary Guidance and did not result in an adverse impact on established residential amenity;

D1 – Quality Placemaking by Design:

- Required all development to be of a high standard of design;

D3 – Urban Green Space:

- Development should not result in loss of urban green space; and

Householder Supplementary Guidance:

- Proposal should not result in irregular plot shapes compared to established pattern of plots, nor result in a precedent.

Mr Miller explained that applications that were retrospective should be given no less scrutiny than development that comes forward in the usual pre-emptive manner.

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

He indicated that should members wish to overturn the decision of the appointed officer, consideration should be given to any conditions which would be appropriate in order to make the proposal acceptable. However all conditions must meet the six tests set out by Scottish Government policy.

Mr Miller explained that if members were minded to overturn the decision then he would advise conditions ensuring proposed amendments were carried out and planting would be retained in perpetuity.

The Local Review Body then asked questions of Mr Miller, specifically regarding land ownership, road safety issues relevant to the nearby junction, shrub removal and the reinstatement process.

Members agreed by majority to uphold the decision of the appointed officer to refuse the application.

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The Chairperson and Councillors Copland, John and Nicoll voted to uphold the decision of the appointed officer to refuse the application. Councillor Cameron voted to overturn the decision of the appointed officer and approve the application subject to a condition relating to the relocation and reduction of the fence height to 1.5m for public safety reasons.

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:-

1. The development has resulted in significant detriment to the visual amenity of the residential area by reason of: the incorporation of public open space within a private garden; the associated removal of soft landscaping including established shrubs and trees, which contributed to the landscape character of the residential area; and due to the visual prominence and siting of the boundary fence. The application therefore conflicts with the objectives of the Aberdeen Local Development Plan policies H1 (Residential Areas), D1 (Quality Placemaking by Design), D2 (Landscape), NE3 (Urban Green Space) and NE5 (Trees and Woodland). No material considerations presented or evident are considered to justify approval of the application contrary to the development plan policy objectives;
2. The fence is considered to result in a detriment to public road safety by reason of its location partly within a visibility splay at the junction of Seaview Drive with Dubford Road; and
3. Approval of this application would establish an undesirable precedent for similar proposals which would result in further erosion of the design quality and visual amenity of the wider housing area, and in other similar situations elsewhere within the city, and which is contrary to the local plan policy NE3 and the Council's Householder Development Guide supplementary guidance. Approval of the application could therefore further undermine the above amenity policy objectives of the development plan.

ADVISORY NOTE

The applicant is advised that formal enforcement action may be required in order to secure removal of the existing unauthorised fence within the site and reinstatement of the landscaped amenity open space in accordance with the design quality of the original development layout.

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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 replacement windows at Attic Floor Flat, 69 Hardgate, Aberdeen, Planning Reference 170683.

The Chairperson advised that the LRB would again be addressed by Mr Andrew Miller 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. She 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 Roy Brown, Planning Technician; (2) the decision notice dated 8 September 2017; (3) plans and photos showing the proposal; (4) links to the planning policies referred to in the delegated report; (5) the application and Notice of Review submitted by the applicant's agent.

Mr. Miller advised that the submitted Notice of Review was found to be valid and submitted within the relevant timeframes. He also indicated that the appellant had requested that the LRB undertake a site inspection and consider further written submissions and a hearing session as further procedures.

Mr Miller indicated that the site subject to this review was an attic floor flat in a 2.5 storey traditional granite built terrace that backs on to Hardgate, fronting towards Bon Accord Terrace Gardens, to the north of Union Glen. He explained that it was within the Bon-Accord Crescent/Crown Street Conservation Area.

Mr Miller advised that the application sought consent for the replacement of all timber sash-and-case windows at attic floor level with white PVCu sash and case windows. The proposed windows would have plant on astragals and trickle vents.

Mr Miller intimated that the request sought the review of the decision of the appointed officer to refuse the application under delegated powers. In refusing the application, the reasons given were as follows:-

- Insufficient information provided with the application (no window condition survey provided that demonstrates the existing windows are beyond economical/practical repair).
- Inappropriate features (plated astragals and trickle vents).
- Creation of precedent for similar proposals.

It was therefore considered to be contrary to policy H1, D1, D4, Windows and Doors Supplementary Guidance, Historic Environment Scotland Policy Statement (HESPS) and Scottish Planning Policy (SPP).

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Mr Miller made reference to the appellant's case advising that the Notice of Review Statement outlined that the replacement windows would match the existing windows and there were other examples of precedent (PVCu) windows at ground floor level at 65 Hardgate, Aberdeen in the past six months.

In relation to consultations and objections, Mr Miller advised that no letters of objection had been received. Environmental Health had requested that a Noise Impact Assessment be undertaken, Roads Development Management had no objections and the Flooding Team had no objections following provision of additional information.

The members of the Local Review Body agreed that there was no requirement for a site visit, hearing(s) or written submissions as they felt that they had enough information before them. The Local Review Body thereupon agreed that the review under consideration should be determined without further procedure.

Mr Miller then outlined the relevant Policy considerations as follows:-

H1 – Residential Areas:

- Residential development was acceptable in principle on basis it complied with Supplementary Guidance and did not result in an adverse impact on established residential amenity;

D1 – Quality Placemaking by Design:

- Required all development to be of a high standard of design;

D4 – Historic Environment:

- The Development should comply with SPP, HESPS – All development should either preserve or enhance the character of conservation areas; and

Windows and Doors Supplementary Guidance – Required evidence to prove that existing windows were beyond economic repair. Windows on public elevations in Conservation Areas should not be PVCu, astragals should go through the window and trickle vents must not be visible.

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

Mr Miller advised that should members wish to overturn the decision of the appointed officer, consideration should be given to any conditions which would be appropriate in order to make the proposal acceptable. However all conditions must meet the six tests set out by Scottish Government policy.

Finally, Mr Miller intimated that if members were minded to overturn the decision, then he would not advise placing any conditions.

The Local Review Body then asked questions of Mr Miller, specifically regarding the nearby ground floor property which had been granted planning permission for replacement windows following review.

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Members agreed by majority to uphold the decision of the appointed officer to refuse the application.

Councillors Cameron, Copland and Nicoll voted to uphold the decision of the appointed officer to refuse the application. The Chairperson and Councillor John voted to overturn the decision of the appointed officer and approve 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:-

There is insufficient information to confirm if the principle of the replacement of the existing traditional timber framed sash and case windows would be acceptable as it has not been demonstrated if these windows are beyond economic / practicable repair. The proposal would replace traditional one-over-one and two-over-two timber framed sash and case windows on readily visible public elevations with windows of an inappropriate modern design, which would be framed with white uPVC, have planted astragals and visible ventilators. The grant of planning permission would set a precedent for similar development in the surrounding area, which would be significantly detrimental to the architectural integrity of the original dwelling and the historic character and appearance of the Bon-Accord and Crown Street Conservation Area. The proposal would therefore conflict with the aims of Scottish Planning Policy; Historic Environment Scotland Policy Statement; Policy D4 - Historic Environment and D1 - Quality Placemaking by Design of the Aberdeen Local Development Plan; the Supplementary Guidance: 'The Repair and Replacement of Windows and Doors'; the aims of the Bon-Accord and Crown Street Conservation Area Character Appraisal; and Managing Change in the Historic Environment: Windows'. There are no material planning considerations which would warrant the approval of planning permission in this instance.

The Local Review Body emphasised that a Window Condition Survey should be submitted in any future window replacement application.

- **COUNCILLOR JENNIFER STEWART, Chairperson**

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