

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

ABERDEEN, 21 January 2022. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor Boulton, Chairperson; and Councillors Bell and Henrickson.

The agenda, reports and recording associated with this meeting can be viewed [here](#).

### **13 TOLLOHILL PLACE - ERECTION OF SHED AND PERGOLA TO REAR (RETROSPECTIVE) - 210913/DPP**

1. With reference to article 2 of the minute of meeting of 17 November 2021, the Local Review Body of Aberdeen City Council (LRB) met on this day to review the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the application for the erection of a shed and pergola to the rear (retrospective) of 13 Tollohill Place, Aberdeen, Planning Reference number 210913/DPP.

Councillor Boulton as Chair, made reference to the site inspection undertaken earlier today and gave a brief outline of the business to be undertaken, advising 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 Gavin Evans who would be acting as the Planning Adviser to the Body in the following 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. 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 regard 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 the appointed officer, Aberdeen City Council (ACC); (2) an application dated 22 June 2021; (3) the decision notice dated 24 August 2021; (4) links to the plans showing the proposal and planning policies referred to in the delegated report; (5) the Notice of Review submitted by the applicant's agent; (5) an extract of the LRB minute of meeting of 17 November 2021; and (5) additional information from the applicant and the appointed officer, ACC requested by the LRB on 17 November 2021.

The LRB was then addressed by Mr Evans who advised that the review had been submitted with all necessary information within the time limit of three months following the decision of the appointed officer.

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Mr Evans then described the site advising that it was a triangular residential plot, located on the corner of Tollohill Place and Tollohill Crescent. The site comprised a two storey, semi-detached dwellinghouse and its associated front and rear curtilage. The dwelling fronted Tollohill Place and adjoined 12 Tollohill Crescent to the south-west (RHS when looking from street). There were lockup garages over the rear boundary. The dwelling sat elevated above street level and was served by a driveway and a single garage along the north-east boundary. In addition, the property had previously been extended to the rear by way of a single storey extension which projected c.3.9m from the rear wall of the original property. Beyond this extension, a partially screened pergola had been erected and at the far end of the plot a shed had been constructed. Both the pergola and shed had been erected without planning permission.

Mr Evans outlined the planning history and proposal for Detailed Planning Permission which was sought retrospectively for the erection of the existing pergola and shed. The pergola projected c.4.2m from the rear of the single storey extension, c.5.6m wide and c.2.6m high at highest point. It was constructed of timber with a perspex roof and canvas curtains to each side. The shed was located at the far end of the rear garden and had been constructed to fit with the shape of the site. It measured a maximum 6.6m in width and 6.9m in length, extending along both boundaries, and had an overall height of 2.5m. It was constructed of timber with canvas curtains to the front and had a flat felt roof, which incorporated two flues. The officer's report highlighted that submitted photos indicated that the shed was utilised as some form of home bar. It was noted that if this was for domestic use, it would likely not involve a material change of use in planning terms.

He indicated that the appointed officer's reasons for refusal stated in the decision notice was as follows:-

- overdevelopment of the site compared the pergola to an extension and highlighted that the footprint of the original dwelling would more than double;
- Pergola and shed, when combined with existing development, resulted in 71.8% of the rear curtilage being covered by development, and was therefore in conflict with the Householder Development Guide Supplementary Guidance;
- resulted in a disproportionately small area of private, undeveloped garden ground, which was incongruous with the established pattern of development and the character of the surrounding area;
- Pergola and shed resulted in development projecting along almost the entirety of the south western boundary shared with 12 Tollohill Crescent, with resultant adverse impact on outlook and amenity;
- conflicted with Policies D1 (Quality Placemaking by Design) and H1 (Residential Areas) of the Aberdeen Local Development Plan (ALDP); associated Householder Development Supplementary Guidance and equivalent policies of the proposed ALDP; and
- No material planning considerations that warrant approval in this instance.

Mr Evans outlined the key points from the appellant's Notice of Review as follows:-

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- argued that the pergola and shed individually would fall under permitted development rights, if not for the 'developed' area at the rear of the house exceeding 50%;
- The pergola was built to facilitate a member of the household who was suffering from mental health problems and found it impossible to leave the house. It was built to afford privacy, while still being able to access the rear garden and get outside for fresh air and to help alleviate the mental health issues suffered;
- Disputes the appointed officer's inclusion of a garage to the side of the property within a calculation of the developed area to the rear. Put forward alternative calculations showing that the proportion of developed rear curtilage was less than stated, and that the developed area of the entire plot would be less than 50%;
- Both structures were free standing and did not have permanent foundations and were demountable;
- The pergola structure was open on 3 sides, the shed being open at the front. The rear 'garden' area was entirely slabbed, similar to several other properties in the surrounding area;
- contended that the impact to number 12 Tollohill Crescent would not be significant due to the orientation of the gardens (south east facing) these structures did not block out any light to the adjoining property, with the pergola being open on 3 sides, with a Perspex roof which allowed daylight to pass through. Neither structure was considered to result in adverse impact on privacy, daylight or general amenity of any neighbouring properties;
- the development was entirely to the rear of the property, and could not be seen from the street side; and
- the barbecue was not used any more frequently than any of the other neighbouring properties and any smoke was directed through a flue at high level, resulting in less impact on neighbours than usual domestic use of a barbecue.

In terms of consultee responses, Mr Evans advised that the Council's Environmental Health Team had no objection but had requested that an advisory be attached to the grant of consent regarding the material burned.

Mr Evans indicated that no response had been received from Kincorth and Leggart Community Council and there were no letters of representation submitted.

The Chairperson and Councillors Henrickson and Bell all indicated in turn that they each now had enough information before them and therefore agreed that the review under consideration should be determined without any further procedure.

In terms of relevant policy considerations, Mr Evans referred to the following in the Aberdeen Local Development Plan 2017:-

- H1: Residential Areas;
- D1: Quality Placemaking by Design; and
- Supplementary Guidance – Householder Development Guide – sections on general principles and outbuildings of relevance.

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Mr Evans responded to questions from members in relation to the date of construction of the pergola and shed and the usage of the shed area.

The LRB heard from Mr Alan Thomson, Legal Adviser who made reference to the duties under Section 149 of the Equality Act 2010, specifically relating to protected characteristics and the definition of a disability and responded to questions thereafter in this regard.

**The Chairperson and Councillors Bell and Henrickson each advised in turn and by a majority of two to one, agreed to reverse the appointed officer's earlier decision and to grant the planning permission unconditionally.**

The Chairperson and Councillor Henrickson indicated that although they agreed with the reasons for the appointed officer's refusal of the application, namely that the proposal would not accord with the relevant policies within the Aberdeen Local Development Plan, they believed that the works would on balance be justified on the basis of helping to alleviate the impacts of the identified disability of a member of the household.

Councillor Bell agreed with the appointed officer's decision 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 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:-

Members of the Local Review Body noted the submission of further information by the applicant and appointed officer in relation to the nature and extent of a mental health condition referred to in the applicants' submissions, along with the extent to which the appointed officer's earlier decision had considered the Equality Act 2010.

Members had due regard for the duty applicable under the Equality act 2010 and its defined 'protected characteristics' and ultimately the Local Review Body concluded that the mental health condition referred to in the applicants' submissions would constitute a disability and therefore represents a protected characteristic for consideration of the proposal in the context of the Equality Act 2010. The LRB agreed with the appointed officer's conclusion that the proposal would not accord with the relevant policies within the Aberdeen Local Development Plan, particularly in respect of overdevelopment of the plot and potential for impact on residential amenity, but felt that the works would on balance be justified on the basis of helping to alleviate the impacts of the identified disability. On that basis, members concluded that approval would

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clearly be based on this specific set of circumstances and would not set an unwelcome precedent for other similar developments.

- **COUNCILLOR MARIE BOULTON, Chairperson.**