

Local Review Body of Aberdeen City Council

ABERDEEN, 18 January 2023. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillors Boulton (Article 1) and Henrickson (Articles 2 and 3), Chairpersons; and Councillors Clark and Cooke.

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

GROUND FLOOR, 13 CORRECTION WYND, ABERDEEN, AB10 1HP - CHANGE OF USE TO PROVIDE AN EXTERNAL SEATING AREA WITH 3 SEATING PODS - 220919

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 application for the change of use to provide an external seating area with three seating pods on road to the front of 13 Correction Wynd, Aberdeen, AB10 1HP, Planning Reference number 220919/DPP.

Councillor Boulton as Chair for this item only, 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 thereafter, by Ms Lucy Greene 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, she 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; (2) an application dated 21 July 2022; (3) the decision notice dated 14 September 2022; (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; and (6) a consultee response submitted by the Roads Development Management Team.

Ms Greene then described the site and advised that it was a rectangular area extending to c.14m² immediately in front of 13 Correction Wynd. The site formed part of the old carriageway of Correction Wynd. The site had a historic setting and character, and was located within the city centre boundary and the City Centre Conservation Area, and was located between the curtilage and boundary wall of the A-listed Churchyard and category B and C listed buildings along Correction Wynd.

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Ms Greene outlined the appellant's proposal which sought planning permission for a change of use of part of Correction Wynd to an external seating area and the installation of three timber pods on the carriageway of Correction Wynd, immediately adjacent to the pavement and opposite to 13 Correction Wynd which currently traded as Red Robin Records (café and record shop). The pods were constructed of timber and painted in various colours, have a mono-pitched roof and measure c.2m by c.1.2m by a height varying between c.1.7m and c.1.9m.

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

- That the change of use of part of the public road carriageway to form an external seating area including the installation of three timber pods was considered to have a detrimental impact on the character and appearance of the Union Street Conservation Area and the setting of various adjacent category A-, B-, and C-listed buildings and their curtilages due to the design, materials, and finishes of the pods;
- The development was thus contrary to policies D1 (Quality Placemaking by Design) and D4 (Historic Environment), of the 2017 Aberdeen Local Development Plan, policies D1 (Quality Placemaking), D6 (Historic Environment) of the 2020 Proposed Local Development Plan; the draft City Centre Conservation Area Character Appraisal and relevant sections of Scottish Planning Policy and the Historic Environment Policy for Scotland (HEPS); and
- That the proposed siting of the pods would obstruct driver visibility both along Correction Wynd and from the pend serving the parking /servicing area to the rear of Correction Wynd, impacting on safety. The development was thus contrary to policy T2 (Managing the Transport Impact of Development) of the 2017 Aberdeen Local Development Plan, and policy T2 (Sustainable Transport) of the 2020 Proposed Local Development Plan; and Supplementary Guidance on Transport and Accessibility.

Ms Greene outlined the key points from the appellant's Notice of Review as follows:-

- Point made that the area was now a pedestrian priority area, with access further limited;
- Sight lines should not be a reason for refusal. The access was through a pend which made sight lines impossible to achieve;
- Councillors at previous LRB felt sight lines could be addressed;
- Design and finish of pods could be adjusted;
- There were other similar structures within the Conservation Area;
- Requested that LRB watch previous LRB to understand case;
- Proposal would provide sheltered outdoor seating and allow café to expand and before moving to bigger premises if successful;
- There had been no complaints from neighbours;
- Highlighted that levels of traffic on Correction Wynd were very low;
- That there were no parking bays on Correction Wynd;

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- Costs of applications, seating and other financial implications of running café in challenging times; and
- Small businesses should be supported.

Ms Greene made reference to consultee responses from the Roads Development Management Team and Environmental Team. She indicated that no comments were submitted by the Community Council. Two letters of objection were submitted on the basis that it was an inappropriate use of public space; would be an ugly addition to the street without architectural merit; and it would detract from the area and should not be built on a public highway.

In terms of history there was an application refused in December 2021 and subsequently the LRB upheld that decision.

Ms Greene advised that the applicant had expressed the view that the review may proceed on the basis of the information provided.

The Chairperson and Councillors Clark and Cooke all indicated in turn that they each 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, Ms Greene referred to the Aberdeen Local Development Plan 2017 and the proposed Local Development Plan 2020.

Ms Greene responded to questions from members in relation to parking/disabled parking.

The Chairperson and Councillors Clark and Cooke each advised in turn and unanimously agreed to uphold the appointed officer's earlier decision to refuse the planning permission.

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:-

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 are as follows –

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That the change of use of part of the public road carriageway to form an external seating area including the installation of three timber pods for a period of five years is considered to have a detrimental impact on the character and appearance of the Union Street Conservation Area and the setting of various adjacent category A-, B-, and C-listed buildings and their curtilages due to the design, materials, and finishes of the pods. The development is thus contrary to policies D1 (Quality Placemaking by Design) and D4 (Historic Environment), of the 2017 Aberdeen Local Development Plan, policies D1 (Quality Placemaking), D6 (Historic Environment) of the 2020 Proposed Local Development Plan; the draft City Centre Conservation Area Character Appraisal and relevant sections of Scottish Planning Policy, National Planning Framework 4 (NPF4) and the Historic Environment Policy for Scotland (HEPS). That the proposed siting of the pods would obstruct driver visibility both along Correction Wynd and from the pend serving the parking /servicing area to the rear of Correction Wynd, impacting on safety. The development is thus contrary to Supplementary Guidance on Transport and Accessibility.

KINGSHILL - ERECTION OF PORCH. 1.5 STOREY EXTENSION TO NORTH ELEVATION, DORMER EXTENSIONS AND DETACHED DOMESTIC GARAGE - 211447

2. The LRB 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 application for the erection of a porch, 1.5 storey extension to north elevation, dormer extensions and detached domestic garage at Kingshill, Kingswells, Aberdeen, AB15 8QB, Planning Reference number 211447/DPP.

Councillor Henrickson, who was chairing the following two reviews advised that Ms Lucy Greene would again be acting as the Planning Adviser to the Body in the following case under consideration this day and reiterated that although the Planning Adviser was employed by the planning authority, she 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 the Appointed Officer, Aberdeen City Council (ACC); (2) the original application dated 15 September 2021; (3) the decision notice dated 13 September 2022; (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; and (6) a consultee response submitted by the Roads Development Management Team.

The LRB was then addressed by Ms Greene 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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Ms Greene then described the site advising that it comprised a 1.5 storey late 19th century granite-built dwellinghouse, known as Kingshill. It has associated residential curtilage, and an area of undeveloped land to its east. The dwellinghouse had a southeast facing principal elevation; it had single-storey flat roofed extension to the rear and a box dormer to the front. The site sloped c.1m from the north of the site to the ground adjacent to the southeast elevation of the dwellinghouse. The application site was allocated within Opportunity Site 38 – Countesswells (OP38) in the Aberdeen Local Development Plan 2017, the delivery and construction of the Countesswells development is on-going and much of it to the south of the application site had been completed. The dwellinghouse was part of a group of four dwellinghouses bounding Kingshill Road.

In terms of the appellant's proposal, Ms Greene advised that Detailed Planning Permission was sought for the erection of a two storey extension next to the existing projecting gable. The extension would have a maximum height of 5.6m, with ridges at 5.5m and eaves at 2.8m. The extension would project 6m beyond the existing flat roofed extension and the porch would include an entrance door and would project out 2.6m. In terms of the materials, the front elevation would be in reclaimed granite and the roof would be slate. The roof tiles would match the existing, other finishes would be cement timber effect cladding and fyfestone (slate and pink mix) with UPVC windows.

She indicated that the Appointed Officer's reasons for refusal stated in the decision notice were as follows:-

- Excessive massing, projection to rear and dominant built elements;
- Inconsistent design features;
- Footprint relative to original house;
- Detracts from character and amenity of the area; and
- Contrary to Policy D1, and Householder Design Guide, D1 and D2 of the Proposed Plan.

Ms Greene outlined the key points from the appellant's Notice of Review as follows:-

- Roof form was compromised when dormer was installed;
- Footprint of building previously included area to north, albeit not with flat roof (1901 ordnance survey submitted);
- Proposal was superior quality and more traditional roof, less brutal dormer and over design cohesion;
- Materials are consistent with local vernacular;
- Existing footprint was 122m², whilst proposed is 188m² – 54% increase;
- Site area is 957m² and proposal is 217m² with garage – 23% of plot;
- Area was dominated by Countesswells, proposal would not detract; and
- There were a few examples of vernacular architecture in area.

Ms Greene provided details in relation to the consultee response from the Council's Roads Development Management Team advising that they had no objections to the

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proposal. There were no comments from the community council and no other representations submitted.

Ms Greene advised that the applicant had expressed the view that the further procedure was required, with a request that a site inspection be undertaken.

The Chairperson and Councillors Clark and Cooke all indicated in turn that they each 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, Ms Greene referred to the following in the Aberdeen Local Development Plan 2017 and the Proposed Plan 2020.

Ms Greene responded to questions from members in relation to the site plan from the west, she also clarified that the property was not listed and not in situated within a Conservation Area.

The Chairperson and Councillors Clark and Cooke each advised in turn and unanimously agreed to reverse the appointed officer's decision and to therefore grant planning permission conditionally.

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:-

Taking into account the context of the surrounding area, the proposed extension would be acceptable in terms of its design, scale and massing, including its impact on the original dwellinghouse. It would not detract from the character and visual amenity of the surrounding area. It would therefore accord with Policy H1 - Residential Areas and Policy D1 – Quality Placemaking by Design of the adopted Aberdeen Local Development Plan 2017; the Supplementary Guidance: 'The Householder Development Guide'; and Policy H1 - Residential Areas, Policy D1 – Quality Placemaking and D2 – Amenity of the Proposed Aberdeen Local Development Plan 2020.

Condition

Duration of Permission - The development to which this notice relates must be begun not later than the expiration of 3 years beginning with the date of this notice. If development has not begun at the expiration of the 3-year period, the planning permission lapses.

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Reason - in accordance with section 58 (duration of planning permission) of the 1997 act.

FAIRHILL, 275 NORTH DEESIDE ROAD - ERECTION OF DETACHED DOUBLE GARAGE WITH HOME OFFICE ABOVE - 220805

3. The LRB 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 application for the erection of a detached double garage with home office above at Fairhill, 275 North Deeside Road, Milltimber, Aberdeen, AB13 0HA, Planning Reference number 220805/DPP.

The Chairperson advised that Ms Lucy Greene would again be acting as the Planning Adviser to the Body in the following case under consideration this day and reiterated that although the Planning Adviser was employed by the planning authority, she 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 the Appointed Officer, Aberdeen City Council; (2) an application dated 23 June 2022; (3) the Decision Notice dated 7 September 2022; (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; and (6) a consultee response from the Council's Roads Development Management Team.

Ms Greene then described the site advising that it consisted of a 2 storey detached house within a large plot and accessed off North Deeside Road, with the garden ground bounded by Station Road East to the east. A small existing garage existed alongside the eastern boundary of the garden which contained a number mature trees mainly around the edges and these were protected by Tree Preservation Order(s). The driveway split so that one route leads to the rear of the house. To the south east of the house and running parallel at a distance of some 8 metres from the eastern boundary of the site, lay an overgrown path which had been identified as an old driveway. The path extended from the hardstanding which lay to the east of the property and to the southern boundary of the site.

Ms Greene indicated that the proposal was for the erection of a two storey extension next to the existing projecting gable. The proposal would result in the loss of 11 spruce trees which lay within the footprint and to the north of where the proposed garage would be located, with 6 of these rising to a height of 20-21m and the remaining 5 measuring between 12-19m in height. The Survey highlighted the trees had a life expectancy of less than 10 years and recommended their removal within 12 months, outlining that such removal would create significant opportunity for replacement planting and allow for the

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establishment of a more diverse range of trees of long-term potential. The Survey advised that a mixture of Scots Pine and Silver Birch were used to maximise biodiversity and tree cover, with tree planting locations included within the Tree Survey Drawing.

Ms Greene outlined the Case Officer's reason for refusal in the report of handling as follows:-

The proposed garage development was deemed to be of an inappropriate scale and massing which does not reflect the typical proportions of an ancillary building. It would appear overly dominant from out with the site, failed to respect the context of the surrounding area, nor any established pattern of development, and would have a negative visual impact on its established character. The proposal would result in the loss of 11 protected trees which form part of a continuous line of trees along the eastern boundary of the site (TPO 225) and whilst their removal may be necessary due to their limited long-term potential, their loss to enable this unacceptable development was not supported. The proposal was therefore considered to be contrary to the requirements of Policies H1 (Residential Areas), D1 (Quality Placemaking by Design) and NE5 (Trees and Woodlands) of the adopted Aberdeen Local Development Plan 2017; does not address the expectations of the Council's Supplementary Guidance: 'The Householder Development Guide' or 'Trees and Woodlands'; and failed to comply with Policies H1, D1, D2 and NE5 of the proposed Aberdeen Local Development Plan 2020.

In terms of the applicant's case, Ms Greene advised that this was outlined in full within their Notice of Review documents, but could be summarised as follows:-

- New detached garage with first floor was approved;
- Tree loss was as approved previously;
- First floor above ancillary buildings is permitted by policy, height would be 435mm higher (5590mm approved previously);
- Extra height would improve headroom and amenity;
- Large site and 70 trees;
- Trees to be removed are spruce, no broadleaf trees. Removal recommended within 12 months. This was unaltered by proposal;
- No visible impact by increased size;
- No objections;
- Existing garage was too small for modern cars;
- Various proposals included amendments to reduce ridge height from 6735mm to now 6025mm, removal of external stair;
- Eaves height would be only 57mm more than approved;
- Eaves run parallel to Station Road East, meaning ridge was set back from boundary;
- Approved scheme was drastic reduction in utility of space;
- Stair was internal – garage would retain appearance of single storey;
- Garage was 58m², ancillary within this plot size; and
- Would be screened by boundary wall and trees to north and south

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In terms of consultee responses, Ms Greene advised that there was no objection from the Roads Development Management Team, No comments were received from the Community Council and no representations were received.

Ms Greene advised that the applicant had expressed the view that the review could proceed without the need for further procedure.

At this point in the proceedings, the LRB considered whether they had sufficient information before them to proceed to determine the review.

The Chairperson and Councillors Clark and Cooke all indicated in turn that they each 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, Ms Greene referred to the following in the Aberdeen Local Development Plan 2017.

Ms Greene responded to questions from members in relation to the tree loss and the height of the extension.

The Chairperson and Councillors Clark and Cooke each advised in turn and by a majority of 2 to 1 agreed to reverse the appointed officer's earlier decision and to therefore grant planning permission conditionally.

The Chairperson agreed with the appointed officer's decision to refuse the application.

Councillors Clark and Cooke indicated that they believed that in this instance, and on balance, they were comfortable with the proposed development, particularly as the trees would be replaced, there was no loss of open space/footprint, materials being used were in keeping with the area, there was no huge increase in height and the development would have no impact on neighbours.

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:-

The proposed garage development will be sited within the boundary of the existing residential site and on balance is deemed to be of an appropriate scale and massing which reflects the proportions of an ancillary building. The garage building has been designed with due consideration for its context and will not appear overly dominant, including from outwith the site, with limited effect on the established character of the surrounding area and no adverse impact on existing residential amenity. Whilst the proposal will result in the loss of a number of protected mature trees which form part of a continuous line of trees along the

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eastern boundary of the site (TPO 225), it is acknowledged that in this instance removal of the trees has been deemed necessary in the short-term regardless of this development proposal, due to their very limited life expectancy. As such, it has been accepted that with an appropriate scale and design of development being proposed, the level of replanting that will be secured and delivered as part of the proposal will allow for the landscape character and amenity of the area to be suitably maintained and protected in the long term. Weight is also given to the extant permission for a garage in this location (Reference: 211634/DPP) is a material consideration, which would involve removal of the same trees.

Taking all of the above into account it is considered that subject to appropriate conditions being applied, the proposal would not be contrary to the expectations of Policy NE5 (Trees and Woodlands) of the Aberdeen Local Development Plan (ALDP) and would suitably comply with both Policy H1 (Residential Areas) and Policy D1 (Quality Placemaking by Design) of the ALDP, whilst also addressing the requirements of the Council's Supplementary Guidance on Householder Development. It is considered that there are no material planning considerations, including evaluation under the Proposed Aberdeen Local Development Plan 2020, and the Revised Draft National Planning Framework 4 (NPF4) that would warrant refusal of the application.

CONDITIONS

This permission is granted subject to the following conditions.

(01) Duration of Permission

The development to which this notice relates must be begun not later than the expiration of 3 years beginning with the date of this notice. If development has not begun at the expiration of the 3-year period, the planning permission lapses.

Reason - in accordance with section 58 (duration of planning permission) of the 1997 Act.

(02) Ancillary Building Use

That the proposed domestic garage shall not be used for any purpose other than incidental to the enjoyment of the dwellinghouse.

Reason: In order to retain effective planning control of the development in the interests of the residential amenity of the surrounding area.

(03) Tree Protection Fencing

No development shall take place unless tree protection fencing has been erected as shown on drawing 2152707 entitled 'Tree Survey Drawing'. Thereafter the tree

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protection fencing shall remain in place until the completion of development unless the planning authority gives written consent for a variation.

Reason: in order to ensure adequate protection for the trees on site during the construction of the development.

(04) Tree Protection

No materials, supplies, plant, machinery, spoil, changes in ground levels or construction activities shall be permitted within the protected areas specified in the approved scheme of tree protection as shown on drawing 2152707 entitled 'Tree Survey Drawing', without the written consent of the planning authority and no fire shall be lit in a position where the flames could extend to within 5 metres of foliage, branches or trunks.

Reason: in order to ensure adequate protection for the trees on site during the construction of the development.

(05) Tree Work

Any tree work which appears to become necessary during the implementation of the development shall not be undertaken without the prior written consent of the planning authority; any damage caused to trees growing on the site shall be remedied in accordance with British Standard 3998: 2010 "Recommendations for Tree Work" before the building hereby approved is first occupied.

Reason: in order to preserve the character and visual amenity of the area.

(06) Tree Planting Scheme

That all tree planting shall be carried out in the first season following completion of the development and in accordance with the approved tree planting scheme within the Tree Survey Report by Struan Dalgleish Arboriculture dated January 2022, or such other scheme as shall be subsequently approved through this condition. Any planting which, within a period of 5 years from the completion of the development, in the opinion of the planning authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by trees of similar size and species to those originally required to be planted.

Reason: to ensure the implementation of a satisfactory scheme of replacement tree planting which is suitably in-keeping with the location and in the interests of the visual amenity of the area.

(07) Tree Protection – No-Dig Construction

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That any resurfacing of the area of driveway highlighted by magenta hatching on the approved drawing 2152707 entitled 'Tree Survey Drawing', shall be undertaken in full accordance with the methodology detailed within Item 4.5 of the Tree Survey Report by Struan Dalgleish Arboriculture dated January 2022, unless the planning authority has given prior written approval for a variation.

Reason: in order to ensure adequate protection for the trees on site.

Advisory Notes For Applicant**Bats:**

During construction work the applicant and/or the developer should remain vigilant for signs of bats, and if they come across any bats or any signs of bats, all work in that area must cease immediately and NatureScot must be contacted for further advice.

It should be noted that bats are a European Protected Species, and it is illegal to:

- Deliberately kill, injure, disturb or capture/take a European Protected Species of animal; and
- Damage or destroy the breeding sites or resting places of such animals.

Where it is proposed to carry out works that will affect a European Protected Species or their shelter/breeding places, whether or not they are present, a licence is required from the appropriate licensing authority.

- **COUNCILLORS DELL HENRICKSON AND MARIE BOULTON, Chairpersons**