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To: Councillor Henrickson, Convener; and Councillors Bouse and Thomson.

Town House,
ABERDEEN 12 April 2023

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

The Members of the **LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL** are requested to meet in **Virtual - Remote Meeting** on **WEDNESDAY, 19 APRIL 2023 at 10.00am.**

JENNI LAWSON
INTERIM CHIEF OFFICER – GOVERNANCE (LEGAL)

B U S I N E S S

1.1 Procedure Notice (Pages 3 - 4)

COPIES OF THE RELEVANT PLANS / DRAWINGS ARE AVAILABLE FOR INSPECTION IN ADVANCE OF THE MEETING AND WILL BE DISPLAYED AT THE MEETING

Link to the [Local Development Plan](#)

TO REVIEW THE DECISION OF THE APPOINTED OFFICER TO REFUSE THE FOLLOWING APPLICATIONS

PLANNING ADVISER - LUCY GREENE

2.1 12 Kirk Crescent South - Erection of Replacement Dwellinghouse - 221154/DPP

Members, please note that all plans and supporting documents relevant to the review can be viewed online [here](#) and by entering the application reference number 221154.

- 2.2 Delegated Report, Original Application Form, Decision Notice and Letters of Representation (if there are any) (Pages 5 - 36)
- 2.3 Planning Policies Referred to in Documents Submitted (Pages 37 - 38)
- 2.4 Notice of Review with Supporting Information Submitted by Applicant / Agent (Pages 39 - 138)
- 2.5 Determination - Reasons for Decision
Members, please note that reasons should be based against Development Plan policies and any other material considerations.
- 2.6 Consideration of Conditions to be Attached to the Application - if Members are Minded to Over-Turn the Decision of the Case Officer

Should you require any further information about this agenda, please contact Mark Masson on mmasson@aberdeencity.gov.uk / tel 01224 067556

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

PROCEDURE NOTE


GENERAL

1. The Local Review Body of Aberdeen City Council (the LRB) must at all times comply with (one) the provisions of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (the regulations), and (two) Aberdeen City Council's Standing Orders.
2. Local members are not permitted to sit on cases that fall within their ward.
3. In dealing with a request for the review of a decision made by an appointed officer under the Scheme of Delegation adopted by the Council for the determination of "local" planning applications, the LRB acknowledge that the review process as set out in the regulations shall be carried out in stages.
4. As the first stage and having considered the applicant's stated preference (if any) for the procedure to be followed, the LRB must decide how the case under review is to be determined.
5. Once a notice of review has been submitted interested parties (defined as statutory consultees or other parties who have made, and have not withdrawn, representations in connection with the application) will be consulted on the Notice and will have the right to make further representations within 14 days.
Any representations:
 - made by any party other than the interested parties as defined above (including those objectors or Community Councils that did not make timeous representation on the application before its delegated determination by the appointed officer) or
 - made outwith the 14 day period representation period referred to abovecannot and will not be considered by the Local Review Body in determining the Review.
6. Where the LRB consider that the review documents (as defined within the regulations) provide sufficient information to enable them to determine the review, they may (as the next stage in the process) proceed to do so without further procedure.
7. Should the LRB, however, consider that they are not in a position to determine the review without further procedure, they must then decide which one of (or combination of) the further procedures available to them in terms of the regulations should be pursued. The further procedures available are:-
 - (a) written submissions;
 - (b) the holding of one or more hearing sessions;

- (c) an inspection of the site.
8. If the LRB do decide to seek further information or representations prior to the determination of the review, they will require, in addition to deciding the manner in which that further information/representations should be provided, to be specific about the nature of the information/representations sought and by whom it should be provided.
 9. In adjourning a meeting to such date and time as it may then or later decide, the LRB shall take into account the procedures outlined within Part 4 of the regulations, which will require to be fully observed.

DETERMINATION OF REVIEW

10. Once in possession of all information and/or representations considered necessary to the case before them, the LRB will proceed to determine the review.
11. The starting point for the determination of the review by the LRB will be Section 25 of the Town and Country Planning (Scotland) Act 1997, which provides that:-
 - “where, in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise.”
12. In coming to a decision on the review before them, the LRB will require:-
 - (a) to consider the Development Plan position relating to the application proposal and reach a view as to whether the proposal accords with the Development Plan;
 - (b) to identify all other material considerations arising (if any) which may be relevant to the proposal;
 - (c) to weigh the Development Plan position against the other material considerations arising before deciding whether the Development Plan should or should not prevail in the circumstances.
13. In determining the review, the LRB will:-
 - (a) uphold the appointed officers determination, with or without amendments or additions to the reason for refusal; or
 - (b) overturn the appointed officer’s decision and approve the application **with or without appropriate conditions**.
14. The LRB will give clear reasons for its decision.

 <p>ABERDEEN CITY COUNCIL</p>	<h2 style="margin: 0;">Strategic Place Planning</h2> <hr/> <p style="margin: 0;">Report of Handling</p>
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Site Address:	12 Kirk Crescent South, Aberdeen, AB15 9RR
Application Description:	Erection of replacement dwellinghouse
Application Ref:	221154/DPP
Application Type:	Detailed Planning Permission
Application Date:	22 September 2022
Applicant:	Mr and Mrs Gunther Newcombe
Ward:	Lower Deeside
Community Council:	Cults, Bieldside and Milltimber
Case Officer:	Aoife Murphy

DECISION

Refuse

APPLICATION BACKGROUND

Site Description

The application site is located to the south west of the city in the established residential area of Cults. The public road, Kirk Crescent South, on which the site is located is accessed from Cults Avenue to the west and Kirk Brae to the east. North Deeside Road lies approximately 182m to the south. The application site currently accommodates a single storey, dual fronted detached dwellinghouse, finished in blockwork and a slated roof, with an attached garage and associated front and rear curtilage. Access to the property from the rear is gained via an existing stair, due to the rear ground level sitting at a lower level as the site slopes downwards towards the south of the site. The property is bounded to the east, west and south by neighbouring dwellinghouses and to the north by low level blockwork walls and the public road, from which a driveway access is present. The rear garden area of the property is surrounded by fencing and hedging along all boundaries.

Relevant Planning History

110118 – Detailed Planning Permission for alterations and extension to existing dwellinghouse – Approved 21.03.2011.

There are other permissions along Kirk Crescent South which relate to extensions to existing dwellinghouses and the complete redevelopment of the site. Relevant permissions are highlighted in the evaluation below.

APPLICATION DESCRIPTION

Description of Proposal

Planning permission is sought for the redevelopment of this site, which would see the demolition of the existing property and the erection of a detached dwellinghouse, which has the appearance of being two storeys in height, with an integrated garage. The dwellinghouse would measure approximately 7.3m in height, 19.5m in depth and 13.8m in width in total. The proposal would also see a single storey element formed to the rear, which would measure approximately 4.5m in height. This part of the development sits at a lower level due to the topography of the site. The proposed house is a double gable frontage design with central front entrance and 45 degree pitched roof elements. The dwellinghouse would accommodate a vestibule, garage, snug, utility, laundry, office, kitchen/dining/living area with pantry, WC and store all on the ground floor. On the first floor, the dwellinghouse would accommodate four bedrooms (two with en-suite and one with en-suite and dressing room) and bathroom. The dwellinghouse would be finished in smooth white render, black timber cladding and natural stone cladding to the walls, black timber windows and a slated roof with a copper roof front porch detail.

The site would still retain front and rear curtilage, but it is not clear how these areas would be finished owing to the level of information on the plans, but the submitted visualisations do show an area of hardstanding to the front of the garage with an enlarged access off Kirk Crescent South. The plans also show a path surrounding the property with stepped access located to the west of the site. The submitted site plan indicates a patio area to the rear around the rear projection, however details have not been provided. In terms of boundary treatments, these are indicated as a hedge/stone wall around the front curtilage and fencing around the rear garden, however elevational details have not been provided.

Amendments

None.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RILNI3BZJVH00>

- Planning Statement
- Preliminary Roost Assessment

CONSULTATIONS

ACC - Roads Development Management Team – has no objection to the proposal.

ACC - Waste and Recycling – has provided general comments regarding the required waste facilities for one dwellinghouse. Such information would be provided via an informative.

Cults, Bieldside and Milltimber Community Council – no comments received.

REPRESENTATIONS

One representation has been received objecting to the proposal. The matters raised relate to overlooking and impact on privacy and enjoyment of the neighbouring property.

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, 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.

National Planning Policy and Guidance

Scottish Planning Policy (SPP)

National Planning Framework 4

National Planning Framework 4 (NPF4) was laid before Parliament as a revised draft for approval on 8 November 2022, meaning that although it has not yet been formally adopted it is now a material consideration in the assessment of planning applications. The weight to be given to it prior to its adoption is a matter for the decision maker. As it has not completed its parliamentary process, it is considered that only limited weight can be attached to it as a material consideration at this stage.

In the case of this application there is considered to be a conflict between the proposals and the policies of NPF4 that require detailed assessment and it is considered that the proposals comply with the overall approach of the revised NPF4. The following assessment therefore focuses on the policies of the adopted local development plan.

Aberdeen Local Development Plan 2017

Section 16 (1)(a)(ii) of the Town and Country Planning (Scotland) Act 1997 requires that, where there is a current local development plan, a proposed local development plan must be submitted to Scottish Ministers within five years after the date on which the current plan was approved. From 21 January 2022, the extant local development plan will be beyond this five-year period. Therefore, where relevant, weight should be given to paragraph 33 of the Scottish Planning Policy (2014) which states: "Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

The following policies are relevant –

Policy D1 - Quality Placemaking by Design

Policy T2 - Managing the Transport Impact of Development

Policy H1 - Residential Areas

Policy NE8 - Natural Heritage

Policy R6 - Waste Management Requirements for New Development

Policy R7 - Low and Zero Carbon Buildings, and Water Efficiency

Supplementary Guidance and Technical Advice Notes

The Sub-division and Redevelopment of Residential Curtilages

Transport and Accessibility

Natural Heritage

Resources for New Development

Proposed Aberdeen Local Development Plan 2020

The Report of Examination on the Proposed Aberdeen Local Development Plan 2020 (PALDP) was received by the Council on 20 September 2022. All the recommendations within the Report have been accepted and the modifications made to the PALDP were agreed by Full Council on 14 December 2022. The PALDP constitutes the Council's settled view as to the content of the final adopted ALDP and is now a material consideration in the determination of planning applications.

The exact weight to be given to matters contained in the PALDP (including individual policies) in relation to specific applications will depend on the relevance of these matters to the application under consideration.

The following policies are relevant – Policy NE3 - Our Natural Heritage, Policy D1 - Quality Placemaking, Policy D2 - Amenity, Policy R5 - Waste Management Requirements from New Developments, Policy R6 - Low and Zero Carbon Buildings and Water Efficiency, Policy H1 - Residential Areas and Policy T3 - Parking

EVALUATION

Principle of Development

The site is located within a residential area, as such Policy H1 - Residential Areas will be used to assess the principle of development. Policy H1 advises that within existing residential areas proposals for new development will be supported if it meets the following criteria:

1. does not constitute over development;
2. does not have an unacceptable impact on the character and amenity of the surrounding area;
3. does not result in the loss of valuable and valued areas of open space; and
4. complies with Supplementary Guidance (SG), in this case The Sub-division and Redevelopment of Residential Curtilages, Transport and Accessibility and Resources for New Development SG's.

With regards to point 1 above, the Sub-division and Redevelopment of Residential Curtilages SG advises that the density of the surrounding area should be reflected in the development proposals for the new and existing property. The SG does provide a general guide for development, in that no more than a third (33%) of the total site area for each individual curtilage should be built upon. In this case, if we look to the general density of the surrounding residential plots, it appears that the dwellinghouses all have similar footprints, with some being extended to the south/south east into their rear curtilage. The Planning Service is aware of some redeveloped sites accommodating replacement dwellinghouses in the wider area, with these having a slightly larger footprint, but these properties are few and far between.

Turning now to the built development, having carried out calculations of this site, the proposed dwellinghouse would represent 41% of the site being developed in terms of built area, significantly higher than the maximum 33% allowed by SG. While the information in the SG is suggested as being a 'general rule' it has been included to ensure that any proposal reflects the general density of the surrounding area. While existing dwellinghouses in the area have been previously extended, the development that is proposed under this application would have a significantly larger footprint. Even more fundamentally, the dwellinghouse proposed would be significant in respect of the volume of development, as it would have the appearance of a two storey property which is much more out of character with the density and level of development seen on the surrounding plots that accommodate largely single and one and a half storey properties.

While reference is made to the potential extension of the existing dwellinghouse through the use of permitted development rights, i.e. the dwellinghouse could be extended to a maximum of 100% of its existing footprint (i.e. approximately 240m²), within in the supporting Planning Statement, that is not what is being assessed here with permitted development rights only considering floor area, not massing. While further information on this aspect is included in the evaluation below, what must be considered is the proposal in front of the Planning Service, which in this case is for the demolition of the existing and erection of a new dwellinghouse. Acknowledging what could be done under separate legislation does not change the fact that the footprint and more importantly the volume of the proposed dwellinghouse is extremely large, not in keeping with Policy H1 or the SG and represents over development of the site.

While the footprint of the development is not acceptable due to its size, it is acknowledged that the location of the new dwellinghouse, in respect to its front building line alone would be in keeping with and respects the existing pattern of development, in that the dwellinghouse would be located towards the north east of the plot, similar to the existing dwellinghouse and this aspect in itself is not an issue for the Planning Service. However, to the rear, the development would extend past the rear building lines and develop a large area of existing garden ground, consequently reducing the extent of the outdoor amenity space available.

Point 2 of Policy H1 and the SG goes on to advise that in terms of character, the scale and massing of the any new dwellinghouse should complement the scale of surrounding properties and be reflective of the surrounding character with the ridge and wallhead heights of any new dwellinghouse being no higher than the ridges or wallheads on adjoining dwellinghouses, ensuring the character of the area is maintained. While this proposed dwellinghouse is detached, the measurements and heights of neighbouring properties are relevant and therefore will be considered in this evaluation. While Policy H1 is the principal policy and is supported by the SG, Policy D1 - Quality Placemaking by Design, is also relevant. Policy D1 expects high standards of design with a strong and distinctive sense of place which is a result of context appraisal.

In terms of scale and massing, it is considered that what is proposed is not acceptable. The dwellinghouse put forward for assessment has the appearance of being two storeys in height, which would sit in an area of predominately single and storey and a half type dwellinghouses. Furthermore, the heights of the existing dwellinghouses, specifically, on the south side of Kirk Crescent South are similar, sitting at approximately 5.6m to the ridges, fully appreciating the slight downward slope of the public road from west to east. The development proposed under this application sits at approximately 7.3m at ridge line height, approximately 1.6m higher than the existing dwellinghouse on this site and higher than those to the north east and south west. This in itself shows that the scale and massing of the proposed and existing developments are not complementary with the scale of the proposal representing inappropriate development within this residential area.

The Planning Service must also look beyond the actual heights of the existing and proposed development and must also consider the perception of height. In this case, the dwellings in the immediate vicinity, as noted above, are mostly single storey and storey and a half type dwellinghouses with modest ridge and eaves heights. As we have seen above the ridge of this proposed dwellinghouse would sit significantly higher than the existing, but in addition to this, the eaves height of this new dwellinghouse would be significantly higher than the eaves on neighbouring properties, resulting in a dominating impact on the character of the streetscape and a dwellinghouse which would look considerably out of place given the surrounding context. This is exacerbated by the proposal to include two facing gables on the principal elevation which results in the appearance of a two storey dwellinghouse among bungalows. In terms of the existing development, the neighbouring dwellinghouses have pitched or hipped roofs which obviously slope back from the street. In this case the proposed dwellinghouse has a more vertical emphasis, which is at odds with the established pattern and character of development. The relatively shallow front garden depth would worsen this issue.

In light of the above, the character of the area is not being maintained by the proposed development, but is being severely impacted upon and is fundamentally not in compliance with Policy H1 and the SG. Furthermore, the proposal does not represent a development that takes into account the surrounding context as required by Policy D1.

Further to the above, the submitted Planning Statement makes reference to the replacement dwellinghouse at 15 Kirk Crescent South (160075) and its approved ridge height of 7m. While this is the case, it is considered that this dwellinghouse does not represent the established ridge height of Kirk Crescent South and is one of the few redevelopments that have taken place along this

street. Furthermore, while the ridge height of that dwellinghouse is similar to the proposed development, its character is more in keeping with the neighbouring properties, in that the eaves of the dwellinghouse have been brought down to match the established pattern. Regardless, the approval and subsequent construction of the dwellinghouse at 15 Kirk Crescent South is not suitable justification of this proposal, especially given the character and scale of the immediate neighbours of the application site at 10 and 14 Kirk Crescent South. Additionally, the dwellinghouse at number 15 sits to the north of Kirk Crescent South which comprises a slightly different established pattern of development from those to the south.

Further to the reference made to 160075, the supporting Planning Statement notes two further plots as justification for the proposed development, 4 Kirk Crescent South (200157/DPP) and 22 Kirk Crescent South (100325). While the application at 15 Kirk Crescent South has been discussed above it should be noted that it and the application at 22 Kirk Crescent South were considered under a previous Local Development Plan and therefore do not provide sufficient justification to support such a proposal. In respect to 4 Kirk Crescent South (200157/DPP), the associated report of handling advises that the approved dwellinghouse mirrored the previously approved alterations to the original dwellinghouse assessed under 191539/DPP. In the case of 200157/DPP, the impact of the development on the character and amenity of the surrounding area was ultimately acceptable, with consideration given to how the design of the replacement house would complement the built character of the Kirk Crescent South streetscene. Furthermore, the proposed layout, scale, form and design accorded with the relevant expectations for a replacement house in the Sub-Division and Redevelopment of Residential Curtilages SG. This is in direct contradiction to this application, which as highlighted above does not accord with the SG criteria, let alone Policy H1 or D1.

In terms of the remainder of point 2 and giving consideration to the amenity of the surrounding area, the Planning Service has reviewed the submitted plans and supporting sun study, in order to assess the likely impact in terms of overlooking and overshadowing in respect of daylight and sunlight from the proposed dwellinghouse. In terms of overlooking, given the location of the windows at ground floor level, it is not anticipated that there would be any overlooking given the direction the windows face and the screening afforded by existing boundary treatments. However, in terms of the first floor level, there is some concern given the height of the dwellinghouse and location of the openings, one of which serves a Juliette balcony, that there would be some level of overlooking into the rear curtilages at both 10 and 14 Kirk Crescent South. However, it is not possible to undertake a definitive assessment given the inability to obtain site visit photos at the height of the proposed windows.

With regards to daylight, the applicant has not provided plans for the neighbouring properties through the submitted assessment, so an assessment of the impact of the proposed dwellinghouse on the daylight receipt of these properties cannot be undertaken. However, given the extensive footprint and the height of the proposed dwellinghouse, it is considered that there would potentially be some impact on the rear elevations and private rear garden areas of the neighbouring properties. Turning to sunlight impact, a sun study has been provided, which shows that there will be some overshadowing specifically to the rear curtilage of 14 Kirk Crescent South into the evening. However, the sun study only shows 9am, noon and 4pm during the month of June, a summer month when the sun is at its highest, not the winter months when the sun is lower in the sky and there is potential for more impact. Upon undertaking its own assessment, the Planning Service does have some concerns for the property at 14 Kirk Crescent South, given its orientation in respect to the application site, especially during the evening hours. The only aspect that would aid the property is that the rear curtilage is orientated to the south east therefore receiving sufficient sunlight during the morning and afternoon.

To aid the assessment of this application in respect to amenity, the Planning Service could have asked for further information, however, given the issues with the proposal in respect of the level of

development and the impact of the development on the character of the proposal, it was not considered necessary or prudent to put the applicant to extra expense to prepare and submit such information. However, these concerns were relayed to the applicant via email.

Overall, given the level of information and the assessment undertaken by the Planning Service, it is considered that it is highly likely that the development would impact levels of residential amenity in the surrounding area, specifically 10 and 14 Kirk Crescent South in terms of privacy and overshadowing.

In addition to the above, given the impact on the character of the area, it is considered that this development would also have a level of detrimental impact on the visual amenity of the streetscape owing to its scale and massing.

In respect of point 3 of Policy H1, the Planning Service notes that the development would not result in the loss of valuable and valued areas of open space owing to the existing nature of this residential site.

Finally in terms of point 4, in that the proposal is required to comply with all relevant Supplementary Guidance (SG), which in this case comprises of the Sub-division and Redevelopment of Residential Curtilages, Transport and Accessibility and Resources for New Development SG's. In respect of the Transport and Accessibility and Resources for New Development SG's, these will be given full consideration below. Turning to the Sub-division and Redevelopment of Residential Curtilages, much of the criteria has been given due consideration above and it is considered that the development fails to comply with the aforementioned SG for a number of reasons set out above.

However, there is one other matter that requires to be considered, this relates to the extent of garden ground. The SG advises that rear gardens of dwellinghouses of up to two storeys should have garden lengths of at least 9m. In this case, the rear garden sits between approximately 8.5m and 15m, which complies with this aspect of the criteria owing to the nature of the development. While this aspect may be compliant, overall the development is not acceptable as it would not be in keeping with the established character and built form of the surrounding area, in that the scale and massing of the new dwellinghouse would not complement the scale of surrounding properties, the density of the surrounding area is not reflected in the development proposals, with more than a third of the total site area being development upon and finally, the ridge of the new dwellinghouse would be higher than the ridges on the neighbouring dwellinghouses. Additionally, there are concerns regarding the level of amenity for the neighbouring properties.

In light of the above, the Planning Service finds the development unacceptable as it fails to comply with Policy H1 - Residential Areas, aspects of Policy D1 - Quality Placemaking by Design and the associated Sub-division and Redevelopment of Residential Curtilages SG.

Design

In respect of Policy D1 - Quality Placemaking by Design and as noted above this policy expects high standards of design with a strong and distinctive sense of place with take into account existing context. While aspects of the development in respect to scale, massing and character have been considered above, the matter of the design of the proposed dwellinghouse requires to be assessed. While the application form submitted suggests this dwellinghouse would be a one and half storey, what is proposed effectively has the massing and appearance of a full two storey dwellinghouse, which in terms of design is not consistent with the existing built development. It is considered that the design elements proposed under this proposal differ too much from the existing, with a vertical emphasis to the dwellinghouse that does not match or correspond with the existing streetscape. Furthermore, the level of development represented here is not consistent with the existing, with the volume, i.e. the footprint and massing of the dwellinghouse, well

exceeding any dwellinghouse in the surrounding area, especially those located on the south side of Kirk Crescent South.

The materials proposed correspond with a contemporary development, which in itself is not an issue, but in this existing context and given the issues with the overall development, the development in this form cannot be accepted. The 'Description of Proposal' section outlines information that is lacking from this proposal, which relates to the finish of the front and rear curtilages and details of boundary treatments. Given the issues relating to the principle of development as noted above, it is not considered prudent to request such information. However, it should be noted that ultimately the proposal fails to comply with Policy D1 - Quality Placemaking by Design, on the basis that what is proposed is not appropriate for the established character of development.

Other Technical Matters

With regards to parking and access, the development is considered acceptable, given that the existing access off Kirk Crescent South would be utilised and sufficient parking would be provided both within the front curtilage of the site and the proposed garage. The Roads Development Management Team has advised that it has no objection to the proposal, which is echoed by the Planning Service. As such the proposal complies with Policy T2 - Managing the Transport Impact of Development and the Transport and Accessibility SG.

Based on a desktop review of the site, it was apparent that there was the potential for bats to be using the existing dwellinghouse, as such, and as per the requirements of Policy NE8 - Natural Heritage, a Preliminary Roost Assessment was requested. This assessment advises that the existing dwellinghouse is in good condition with no bat roost potential at the walls, wallheads, windows or doors. The roof is largely intact apart from limited number of raised slates which has the potential to offer low summer roost potential to single or low number of non breeding bats. It has been suggested that there is better roost potential in other properties in the area. In terms of ensuring no impact takes place, the assessment recommends the erection of a bat box prior to any works taking place, with demolition itself being carried out in winter months. Further to this it is proposed that a bat box would be erected on the southern elevation of the proposed dwellinghouse. The conclusions and recommendations highlighted in the report are considered acceptable and appropriate. Having carried out its due diligence in terms of the aforementioned policy, the Planning Service are satisfied that the proposal is in compliance with both the policy and its associated Natural Heritage SG.

Policy R6 - Waste Management Requirements for New Development requires that all new developments should have sufficient space for the storage of general waste, recyclable materials and compostable wastes where appropriate. In this case it is considered that there is sufficient space for bin storage within the site. ACC's Waste and Recycling Team has advised that it has no objection to the proposal, noting the storage facilities that would be required for a residential dwellinghouse. Overall, it is considered that the proposal is compliant with Policy R6.

In respect of Policy R7 - Low and Zero Carbon Buildings, and Water Efficiency, full details of these aspects would be required and should permission be granted, a condition would be attached ensuring that such information was submitted and approved by the Planning Service. Subject to such a condition, it is considered that the proposal complies with Policy R7 - Low and Zero Carbon Buildings, and Water Efficiency and the Resources for New Development SG.

Representation

The submitted representation highlights concerns regarding overlooking and impact on privacy and enjoyment of the neighbouring property. These matters have been given consideration in the evaluation above.

Supporting Information – Permitted Development

The submitted Planning Statement advises that in terms of the footprint, what is proposed, which has been calculated at approximately 225m², is less than what could be constructed under permitted development rights, with reference also made to the 'fallback position' and the Court of Appeal decision in *Mansell v Tonbridge and Malling Borough Council* (2017). While this may be accurate in terms of one criteria of Class 1A of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, there are many other criteria that the proposal would need to satisfy to be considered permitted development. Furthermore, the applicant would not have permitted development rights to construct an extension with a second storey or provide an additional storey in the way that is being proposed under this application without requiring planning permission. As such, any development carried out to maximise the use of available permitted development rights would be materially different from what is currently proposed, so the supporting information is of limited relevance to and cannot be afforded significant weight in the assessment of this application.

Other Material Considerations

The submitted Planning Statement makes reference to Scottish Planning Policy (SPP), more specifically the fact that where a Local Development Plan is more than five years old, the presumption in favour of sustainable development is a material consideration in the assessment of applications, as highlighted by paragraph 33. While the current Local Development Plan is more than five years old, Aberdeen City Council now have a Proposed Aberdeen Local Development Plan that has been considered by the Scottish Government via the Examination process and all the recommendations within the Report of Examination have been accepted and the modifications made to the PALDP were agreed by Full Council on 14 December 2022. It is therefore the opinion of the Planning Service that the Proposed Aberdeen Local Development Plan is a material consideration. It is considered that the Report of Examination does not affect policies in a manner that is relevant to this application and the relevant Proposed Aberdeen Local Development Plan policies substantively reiterate those in the adopted ALDP. Therefore, and for the reasons already highlighted, the proposal is not acceptable in terms of both plans.

DECISION

Refuse

REASON FOR DECISION

The proposed replacement dwellinghouse represents over development of the site, both in terms of building footprint and massing, with an impact on the residential amenity of neighbouring properties. Furthermore, the design is not consistent or in keeping with the established character of development, with the proposed dwellinghouse having the appearance of a two storey property with a vertical emphasis due to the inclusion of twin facing gables. As such its scale and massing are inappropriate with an eaves and ridge height that is uncharacteristic of the surrounding area. As such the proposal fails to comply with Policy H1 - Residential Areas, the associated The Sub-division and Redevelopment of Residential Curtilages Supplementary Guidance and Policy D1 - Quality Placemaking by Design of the current Aberdeen Local Development Plan 2017 and Policy H1 - Residential Areas, Policy D1 - Quality Placemaking and Policy D2 - Amenity of the Proposed Aberdeen Local Development Plan 2020.

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Marischal College Planning & Sustainable Development Business Hub 4, Ground Floor North Broad Street Aberdeen AB10 1AB Tel: 01224 523 470 Fax: 01224 636 181 Email: pi@aberdeencity.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100598441-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Demolish existing dwelling house, and erect replacement 1.5 storey dwelling.

Is this a temporary permission? * Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) * Yes No

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application) Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Katrina Denholm Architect"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Katrina"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="Denholm"/>	Building Number:	<input type="text" value="8"/>
Telephone Number: *	<input type="text" value="+447988637703"/>	Address 1 (Street): *	<input type="text" value="8 Scotsmill Avenue"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text" value="8 Scotsmill Avenue"/>
Mobile Number:	<input type="text" value="+447988637703"/>	Town/City: *	<input type="text" value="Blackburn"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
		Postcode: *	<input type="text" value="AB21 0HR"/>
Email Address: *	<input type="text" value="katrina.denholm@gmail.com"/>		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Mr and Mrs"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Gunther"/>	Building Number:	<input type="text" value="12"/>
Last Name: *	<input type="text" value="Newcombe"/>	Address 1 (Street): *	<input type="text" value="Kirk Crescent South"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Cults"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Aberdeen"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="AB15 9RR"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="[REDACTED]"/>		

Site Address Details

Planning Authority:

Aberdeen City Council

Full postal address of the site (including postcode where available):

Address 1:

12 KIRK CRESCENT SOUTH

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

ABERDEEN

Post Code:

AB15 9RR

Please identify/describe the location of the site or sites

Northing

803100

Easting

389192

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Initial discussion on telephone with Ross McMahon to agree in principle replacement dwelling house.

Title:

Mr

Other title:

First Name:

Ross

Last Name:

McMahon

Correspondence Reference Number:

Date (dd/mm/yyyy):

24/08/2020

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

560.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Dwelling

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

2

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

3

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes No

Do your proposals make provision for sustainable drainage of surface water?? * (e.g. SUDS arrangements) *

Yes No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

Yes

No, using a private water supply

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? *

Yes No

If Yes or No, please provide further details: * (Max 500 characters)

Bins to be stored at side of property and taken to front for bin collection by home owner

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

Yes No

How many units do you propose in total? *

1

Please provide full details of the number and types of units on the plans. Additional information may be provided in a supporting statement.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? * Yes No

Is any of the land part of an agricultural holding? * Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Katrina Denholm

On behalf of: Mr and Mrs Gunther Newcombe

Date: 12/09/2022

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principal where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

Site Layout Plan or Block plan.

Elevations.

Floor plans.

Cross sections.

Roof plan.

Master Plan/Framework Plan.

Landscape plan.

Photographs and/or photomontages.

Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. * Yes N/A

A Design Statement or Design and Access Statement. * Yes N/A

A Flood Risk Assessment. * Yes N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * Yes N/A

Drainage/SUDS layout. * Yes N/A

A Transport Assessment or Travel Plan Yes N/A

Contaminated Land Assessment. * Yes N/A

Habitat Survey. * Yes N/A

A Processing Agreement. * Yes N/A

Other Statements (please specify). (Max 500 characters)

Planning support statement

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mrs Katrina Denholm

Declaration Date: 12/09/2022

Payment Details

Pay Direct

Created: 21/09/2022 23:28

DECISION NOTICE

The Town and Country Planning (Scotland) Act 1997

Detailed Planning Permission

Katrina Denholm
Katrina Denholm Architect
8 Scotsmill Avenue
Blackburn
AB21 0HR

on behalf of **Mr and Mrs Gunther Newcombe**

With reference to your application validly received on 22 September 2022 for the following development:-

Erection of replacement dwellinghouse at 12 Kirk Crescent South, Aberdeen

Aberdeen City Council in exercise of their powers under the above mentioned Act hereby **REFUSE PLANNING PERMISSION** for the said development in accordance with the particulars given in the application form and the following plans and documents:

Drawing Number	Drawing Type
KHD-A1273-P-01-001	Location Plan
KHD-A1273-P-01-002	Site Layout (Proposed)
KHD-A1273-P-01-004 C	Ground Floor Plan (Proposed)
KHD-A1273-P-01-005	First Floor Plan (Proposed)
KHD-A1273-P-01-006	Elevations (Proposed)
KHD-A1273-P-01-007	3D Image - Render 1
KHD-A1273-P-01-008	3D Image - Render 2

DETAILS OF ANY VARIATION MADE TO THE ORIGINAL APPLICATION

None.

REASON FOR DECISION

The reasons on which the Council has based this decision are as follows:-

The proposed replacement dwellinghouse represents over development of the site, both in terms of building footprint and massing, with an impact on the residential amenity of neighbouring properties. Furthermore, the design is not consistent or in keeping with the established character of development, with the proposed dwellinghouse having the appearance of a two storey property with a vertical emphasis due to the inclusion of twin facing gables. As such its scale and massing are inappropriate with an eaves and ridge height that is uncharacteristic of the surrounding area. As such the proposal fails to comply with Policy H1 - Residential Areas, the associated The Sub-division and Redevelopment of Residential Curtilages Supplementary Guidance and Policy D1 - Quality Placemaking by Design of the current Aberdeen Local Development Plan 2017 and Policy H1 - Residential Areas, Policy D1 - Quality Placemaking and Policy D2 - Amenity of the Proposed Aberdeen Local Development Plan 2020.

Date of Signing 20 December 2022

A handwritten signature in blue ink that reads "Daniel Lewis". The signature is written in a cursive style with a clear first name and a last name.

Daniel Lewis
Development Management Manager

IMPORTANT INFORMATION RELATED TO THIS DECISION

RIGHT OF APPEAL

If the applicant is aggrieved by the decision of the planning authority –

- a) to refuse planning permission;
- b) to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission;
- c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. A review request must be made using the 'Notice of Review' form available from <https://www.eplanning.scot/>.

SERVICE OF PURCHASE NOTICE WHERE INTERESTS ARE AFFECTED BY A PLANNING DECISION

If permission to develop land is refused and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development that would be permitted, the owners of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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Consultee Comments for Planning Application 221154/DPP

Application Summary

Application Number: 221154/DPP

Address: 12 Kirk Crescent South Aberdeen AB15 9RR

Proposal: Erection of replacement of 1.5 storey dwelling house

Case Officer: Aoife Murphy

Consultee Details

Name: Mr scott lynch

Address: Marischal College, Gallowgate, Aberdeen AB10 1YS

Email: Not Available

On Behalf Of: ACC - Roads Development Management Team

Comments

I note that this application is for the Erection of replacement of 1.5 storey dwelling house at 12 Kirk Crescent South. The site is located in the outer city, outwith any controlled parking zone.

As noted in the planning statement, three parking spaces are proposed for this dwelling - 2 driveway spaces and a garage. As the property consists of 4 bedrooms this level of parking is appropriate.

Can the length of the driveway be confirmed, scaling from the drawing suggests it is ~5.5m but our standards stipulate that the length of a driveway on a new build house should be 6m. Scaling from the drawing suggests that the garage internal dimensions are acceptable but, for the avoidance of doubt, can the applicant confirm what these dimensions are?

If the driveway is to slope towards the adopted surface it should have a channel drain installed at the interface - there is no information provided in this regard on the site plan.

Upon receipt of a response to the above comments I will be better placed to provide a comprehensive Roads response.

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Aoife Murphy

From: Scott Lynch
Sent: 29 September 2022 13:10
To: Aoife Murphy
Subject: RE: 221154/DPP

Hi Aoife,

That addresses all my concerns except the confirmation of the internal garage size – however it looks to be sufficient when scaling off the drawings provided, so no further Roads concerns.

Scott

From: Aoife Murphy <AMurphy@aberdeencity.gov.uk>
Sent: 29 September 2022 10:49
To: Scott Lynch <SLynch@aberdeencity.gov.uk>
Subject: FW: 221154/DPP

Scott,

For info regarding the above application.

Thanks,

Aoife

From: Katrina Denholm <katrina.denholm@gmail.com>
Sent: 29 September 2022 10:46
To: Aoife Murphy <AMurphy@aberdeencity.gov.uk>
Subject: Re: 221154/DPP

Morning,

As per our phone conversation, site plan showing the dimensions the drive is 5.8m to the roof line shown on site plan but actually 6m to the building line due to the 200mm roof overhang. I've also added a note re the channel drain along drive & pavement divide.

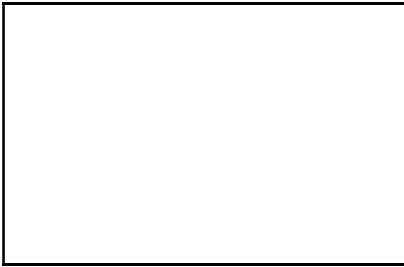
Any queries please let me know

Kind Regards

Katrina

Katrina Denholm Architect
8 Scotsmill Avenue
Blackburn
Aberdeenshire
AB21 0HR

Tel: 07988637703



On Thu, 29 Sept 2022 at 09:53, Aoife Murphy <AMurphy@aberdeencity.gov.uk> wrote:

Katrina,

Please find attached comments from Roads regarding the above application. Could you review and provide me with the information in the next 10 working days?

Regards,

Aoife



Aoife Murphy | Senior Planner

Aberdeen City Council | Development Management | Strategic Place Planning | Place
Marischal College | Ground Floor North | Broad Street | Aberdeen | AB10 1AB

Landline: 01224 52 2156 | Mobile: 07970 065631

Technical Team (Applications): 01224 52 3470 | Email: pi@aberdeencity.gov.uk

www.aberdeencity.gov.uk | Twitter: @AberdeenCC | Facebook.com/AberdeenCC

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Aberdeen City Council – Development Management Team Consultation Request

Case Officer: Aoife Murphy	To: ACC - Waste And Recycling
E-mail: AMurphy@aberdeencity.gov.uk	Date Sent: 27 September 2022
Tel.: 01224 522156	Respond by: 18 October 2022

Application Type: Detailed Planning Permission
Application Address: 12 Kirk Crescent South Aberdeen AB15 9RR
Proposal Description: Erection of replacement of 1.5 storey dwelling house
Application Reference: 221154/DPP
Consultation Reference: DC/ACC/RIVBQ2BZ03804

To view the plans and supporting documentation associated with the application please [follow this link](#).

In the case of pre-application enquires please login at <https://publicaccess.aberdeencity.gov.uk> and in 'Consultation Search' enter the consultation reference (shown above) into the 'Letter Reference' field and then click 'Search'.

Unless agreed with the case officer, should no response be received by the respond by date specified above it will be assumed your service has no comments to make.

Should further information be required, please let the case officer know as soon as possible in order for the information to be requested to allow timeous determination of the application.

Response

Please select one of the following.

No observations/comments.	
Would make the following comments (please specify below).	
Would recommend the following conditions are included with any grant of consent.	
Would recommend the following comments are taken into consideration in the determination of the application.	Y
Object to the application (please specify reasons below).	

COMMENTS

Waste Services response regarding application 221154 12 Kirk Crescent South

As I understand, the development will consist of the erection of 1 house

I have consulted with colleagues across the waste operations team. I can confirm that Aberdeen City Council intend to provide the following services upon building completion.

Please note the information provided below by Waste Services is independent of the outcome of the planning application, which is being determined by the planning authority.

Each residential property will be provided with:

- 1 x 180 litre wheeled bin for general waste
- 1 x 240 litre co-mingled recycling bin for recycling
- 1 x 240litre wheeled bin for food and garden waste (kitchen caddy, bioliners and associated information will be provided as well)

The following costs will be charged to the developer:

- Each 180l or 240l bin cost £36.93 each
- Delivery fee £30

It is pertinent to note that these services will be provided taking account of the following:

General points

- All the waste containers must be presented at the front of property on Kirk Crescent South only on the collection day and must be removed from the kerbside as soon as possible. No containers should be permanently stored on the kerbside.
- Crews will not enter property to access bins
- No excess should be stored out with the containment provided. Information for extra waste uplift is available to residents at either www.aberdeencity.gov.uk/wasteaware or by phoning 03000 200 292.
- Further information can be found in the Waste Supplementary Guidance available at: <https://www.aberdeencity.gov.uk/sites/default/files/2020-07/7.1.PolicySG.ResourcesForNewDevelopmentUpdateJuly2020.pdf>

Developers must contact Aberdeen City Council a minimum of ONE month before properties will be occupied. Bins MUST be on site prior to residents moving into properties. A Purchase Order should be raised with Aberdeen City Council using the above details and we will provide further guidance for purchasing the bins.

Responding Officer: L Todd

Date: 29/09/2022

Email: wasteplanning@aberdeencity.gov.uk

Comments for Planning Application 221154/DPP

Application Summary

Application Number: 221154/DPP

Address: 12 Kirk Crescent South Aberdeen AB15 9RR

Proposal: Erection of replacement of 1.5 storey dwelling house

Case Officer: Aoife Murphy

Customer Details

Name: Ms Rhona McFarlane

Address: 34 Manor Place Cults Aberdeen

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The proposed house is considerably taller than the existing house that is intended to be demolished (which only comprises one floor).

Based on the plans submitted with the application, the upper floor windows (south elevation) of the proposed house would overlook my property and would have a direct view into my garden and upper floors of my house. The current house does not.

I am therefore objecting to the planning application as I believe this house will have a significant negative impact upon both my privacy and my enjoyment of my house and garden.

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Application 220805/DPP

Aberdeen Local Development Plan (ALDP) 2017

- H1 – Residential Areas
 - D1 - Quality Placemaking by Design
 - T2 - Managing the Transport Impact of Development
 - Policy NE8 - Natural Heritage
 - Policy R6 - Waste Management Requirements for New Development
 - Policy R7 - Low and Zero Carbon Buildings, and Water Efficiency
- https://www.aberdeencity.gov.uk/sites/default/files/LDP_WS_20170328.pdf

Proposed Aberdeen Local Development Plan (2020) / Aberdeen Local Development Plan 2022

- H1 – Residential Areas
- D1 – Quality Placemaking
- D2 – Amenity
- NE3 - Our Natural Heritage
- R5 - Waste Management Requirements from New Developments
- R6 - Low and Zero Carbon Buildings and Water Efficiency
- T3 - Parking

<https://www.aberdeencity.gov.uk/services/planning-and-building/local-development-plan/aberdeen-local-development-plan/aberdeen-local-development-plan-review#3678>

Supplementary Guidance

The Sub-division and Redevelopment of Residential Curtilages

Transport and Accessibility

Natural Heritage

Resources for New Development

[Supplementary guidance and technical advice | Aberdeen City Council](#)

Other Material Considerations

National Planning Framework 4

[Supporting documents - National Planning Framework 4: revised draft - gov.scot \(www.gov.scot\)](#)

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Marischal College Planning & Sustainable Development Business Hub 4, Ground Floor North Broad Street Aberdeen AB10 1AB Tel: 01224 523 470 Fax: 01224 636 181 Email: pi@aberdeencity.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100616463-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number: You must enter a Building Name or Number, or both: *

First Name: * Building Name:

Last Name: * Building Number:

Telephone Number: * Address 1 (Street): *

Extension Number: Address 2:

Mobile Number: Town/City: *

Fax Number: Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Mr & Mrs"/>	Building Name:	<input type="text" value="c/o agent"/>
First Name: *	<input type="text" value="Gunther and Michelle"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Newcombe"/>	Address 1 (Street): *	<input type="text" value="c/o agent"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="c/o agent"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="c/o agent"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="c/o agent"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="c/o agent"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="info@auroraplanning.co.uk"/>		

Site Address Details

Planning Authority:	<input type="text" value="Aberdeen City Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="12 KIRK CRESCENT SOUTH"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="ABERDEEN"/>
Post Code:	<input type="text" value="AB15 9RR"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="803100"/>	Easting	<input type="text" value="389192"/>
----------	-------------------------------------	---------	-------------------------------------

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Erection of replacement dwellinghouse

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see separate Statement of Reasons

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Please see Appendix Two to the Statement of Reasons

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

221154/DPP

What date was the application submitted to the planning authority? *

22/09/2022

What date was the decision issued by the planning authority? *

20/12/2022

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

A site visit will allow members to appreciate the extent to which the proposed house is in keeping with the established pattern of development in the area.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Miss Pippa Robertson

Declaration Date: 03/02/2023

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**NOTICE OF REVIEW
UNDER
S.43a(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

in respect of

DECISION TO REFUSE PLANNING APPLICATION REFERENCE 221154/DPP

for

ERECTION OF REPLACEMENT DWELLINGHOUSE

at

**12 KIRK CRESCENT SOUTH
ABERDEEN
AB15 9RR**

STATEMENT OF REASONS

1 Introduction

1.1 Planning application reference 221154/DPP, seeking planning permission for the erection of a replacement dwellinghouse at 12 Kirk Crescent South, Aberdeen, was refused by officers under delegated powers on 20 December 2022 [Document 15]. Our clients now seek a review of that decision for the reasons set out in this Statement, as read alongside the other documents submitted with this (a list of which is provided at Appendix Two). In particular, those documents include a Planning Statement [Document 10] which provides full details of the proposed development and addresses the relevant policies of:

- the Aberdeen Local Development Plan 2017 (ALDP 2017) - which was the adopted local development plan at the time the application was determined by officers;
- the emerging Aberdeen Local Development Plan 2023 (ALDP 2023) [Document 16] – which is expected to be the adopted local development plan at the time this Review is determined, and is therefore the local development plan against which the application now needs to be assessed; and
- the emerging fourth National Planning Framework (NPF4) – the revised draft version of which (published in November 2022) [Document 17] was a material consideration at the time the application was determined by officers, and is now to be adopted in February 2023, when it will become part of the development plan against which the application requires to be assessed as well.

1.2 In summary, this Statement demonstrates that the reasons given for the refusal of the application are not justified, and that the proposed house:

- complies with all relevant policies of the ALDP 2023, namely Policies H1 - Residential Areas, D1 - Quality Placemaking, D2 - Amenity, NE3 - Our Natural Heritage, R5 - Waste Management Requirements for New Development, R6 - Low and Zero Carbon Buildings, and Water Efficiency, and T3 - Parking;
- is consistent with NPF4's aspirations in terms of making more sustainable use of land, delivering new homes close to facilities, and increasing the density of settlements; and
- is supported by relevant material considerations, most notably the Council's approval of a number of applications for new houses of a similar scale in recent years, with no changes in the relevant policy requirements in the interim that

would justify a different approach being taken to this application than that which was taken in respect of those.

1.3 In particular, it should be noted that the house has been designed with cognisance for the site context and to ensure that it does not constitute overdevelopment, in that it would:

- cover less of the site than could be the case if the existing house were extended under permitted development rights;
- be in keeping with existing development in the area, which includes houses of up to 2 storeys high, with ridge heights comparable to that proposed in this case, footprints that are bigger, and similar designs to that proposed;
- result in less overlooking of neighbouring gardens than the addition of a rear dormer under permitted development rights could, with this also being similar to the extent of overlooking arising from the newly consented house at 4 Kirk Crescent South, such that the proposed house cannot be considered unacceptable in this respect; and
- be of a size and orientation relative to neighbouring properties which means that there would be not unacceptable impact on neighbours as a result of overshadowing.

1.4 It should also be noted that the Report of Handling for the application [Document 14] confirms that:

- in terms of its front building line, the location of the proposed house would be in keeping with and respects the existing pattern of development;
- the rear garden area of the proposed house would comply with the requirements of the relevant supplementary guidance in terms of length;
- there is no issue with the proposed materials, or the fact that these correspond to a contemporary development;
- the proposed development complies with relevant ALDP 2017 policy requirements relating to technical matters, including in respect of parking and access (Policy T2), natural heritage (Policy NE8), waste management (Policy R6), and energy and water efficiency (Policy R7), and with there being no material changes in the policy requirements of the corresponding policies in the ALDP 2023 (as also confirmed in

the Report of Handling), the proposed development must also be considered to comply with those (namely Policy T2, Policy NE8, Policy R6 and Policy R7); and

- the proposals comply with the overall approach of the revised draft NPF4.

1.5 It should also be noted that there were no objections to the application from any statutory consultees, including the Community Council, with the only objection coming from a resident of 34 Manor Place, rather than any immediate neighbours on Kirk Crescent South. And, whereas it is noted that the rear garden of 34 Manor Place backs onto the rear garden of 12 Kirk Crescent Site, there would be a distance of approximately 75m between the proposed new house and this property, with the proposed house having no impact on 34 Manor Place as a result, particularly given that there are existing upper floor windows looking towards it from numbers 10 and 16 Kirk Crescent South in any event, as shown on photos submitted to the Council in response to this objection having been received [Document 13].

1.6 Lastly, where concerns have been expressed in the Report of Handling about size of the proposed development, and the potential impact of it on the character and amenity of the area, these are addressed in full below, demonstrating that this in fact complies with all relevant Development Plan policy requirements, as well as being supported by other relevant material considerations.

1.7 As the proposed development complies with the Development Plan and is supported by relevant material considerations, with no material considerations to indicate otherwise, the Notice of Review should be upheld, and the application approved.

2 Application site context

2.1 Given that the reasons for refusal of the application relate primarily to the size of the proposed house compared with others in the area, it is important to first establish the context in which this needs to be assessed. Notably, the Report of Handling contends that the established pattern of development differs between the north side of the street and the south, with the latter (on which the application site is located) described as predominantly comprising single or 1.5 storey dwellinghouses. However, this is at odds with the approach taken by the Council in the context of other recent applications to replace other houses nearby, where no such distinction has been made, and it has been recognised that the street includes houses of up to 2 storeys in height. In particular, looking just at applications for houses which address the south side of Kirk Crescent South, and which were approved under either the 2012 or 2017 Aberdeen Local Development Plans (in which the relevant policies were substantially

the same as those in the 2023 Plan against which this Notice of Review requires to be determined, as set out in more detail below), this includes:

- **planning application reference 150043** for a replacement house at 7 Cults Gardens (located on the corner of Cults Gardens and the south side of Kirk Crescent South, with vehicular access to it being from the latter), the Report of Handling for which [Document 19] describes the surrounding area as including a mixture of single, 1.5 and 2 storey dwellings. There is though only one 2 storey dwelling on Cults Gardens itself, with it thus being clear that either (i) the assessment of the area also took into account 2 storey dwellings on Kirk Crescent South, or (ii) the existence of just one 2 storey dwelling is sufficient for buildings of this height to be taken into account as part of the character of the area within which that building is located;
- **planning application reference 190691/DPP** for a substantial extension to 20 Kirk Crescent South, the Report of Handling for which [Document 20] acknowledges that the site context for that includes the substantial property at 5 Kirk Drive (for further details of which, see below), with this thus also being part of the site context for against which the appeal application requires to be assessed; and
- **planning application reference 200157/DPP** for a replacement house at 4 Kirk Crescent South, the Report of Handling for which [Document 21] describes the street as comprising “*a variety of house types of varied scales and appearances, including modern replacement dwellinghouses*”, with no reference to there being any difference between the north and south sides of the street in this respect, and there being no reason to take a different approach when assessing the appeal application now.

2.2 It should also be noted that the ‘*modern replacement dwellinghouses*’ referred to in the Report of Handling for planning application reference 200157/DPP include the new houses at 7 Cults Gardens and 5 Kirk Drive referred to above, further details of which are set out below, along with other ‘*modern replacement dwellinghouses*’ on Kirk Crescent South itself, all of which date from 2010 onwards. These comprise:

- **15 Kirk Crescent South** (approved March 2016, pursuant to planning application reference 160075) - a 1.75 storey dwelling with a double gable end feature, a ridge height of 7.2m, eaves height of 4.2m, and a footprint of approximately 197m², all as set out in the Report of Handling for the planning application for this [Document 22];

- **7 Cults Gardens** (approved in March 2015, pursuant to planning application reference 150043) – a 1.5 storey dwelling with an overall height of approximately 6.7m, and a total footprint of approximately 224m².
- **5 Kirk Drive (formerly 22 Kirk Crescent South)** (approved May 2010, pursuant to planning application reference 100325) – another substantial 1.75 storey dwelling, with a footprint of approximately 273m²; and
- **11 Kirk Crescent South** (approved April 2009, pursuant to planning application reference 090149) – a substantial 2 storey dwelling with a footprint of approximately 215m².

2.3 With all of these properties having been considered as part of the application site context for the purposes of planning application reference 200157/DPP, they must also be taken into account as part of the application site context for the purposes of the appeal application.

2.4 In this regard, it should also be noted that there is nothing in either local or national policy that sets out how either the “*established pattern of development*” or the “*surrounding area*” should be defined, and there is therefore no basis for restricting any assessment of this to one side only of a street as the Report of Handling for this application does. Rather, it is important to take into account what can be seen on the ground in the immediate vicinity of the application site, and the wider pattern of development of which this forms part. This is particularly so in the context of a street such as Kirk Crescent South, where the mix of house sizes and styles has evolved in a piecemeal pattern overtime (as recognised in the Reports of Handlings for the planning applications for the previously consented replacement properties referred to above), and looking at any one small area of this in isolation is not representative of the street as a whole.

2.5 Taking the above into account, any assessment of how the proposed house relates to the established pattern of development in the area needs to look at how this compares to existing houses on both sides of Kirk Crescent South, as well as the houses at 5 Kirk Drive and 7 Cults Gardens, with this including properties:

- with footprints of up to 273m² (25% bigger than the 218m² of the proposed house); and
- of up to 2 storeys, with ridge heights of up to 7.2m (with the proposed house’s height of 7.3m being consistent with this, particularly as this does not extend to a

full 2 storeys, as set out in more detail in paragraph 3.1 below, and is thus smaller than other houses in the area in this respect).

- 2.6 Perhaps most significantly however, this surrounding site context includes the property at 15 Kirk Crescent South (diagonally opposite 12 Kirk Crescent), with the proposed house intentionally reflecting the design and scale of that in terms of the use of double gables, its footprint and its overall height.
- 2.7 At the same time, whereas the Report of Handling for the application also describes sites on which dwellinghouses have been replaced with a new property with a larger footprint as being few and far between, the above consents also show this to be incorrect, as:
- all of the new houses referred to above have significantly bigger footprints than the original ones (and indeed, in the case of the new house at number 4 at least, the footprint has more than doubled), as well as being higher than both the original properties and the immediate neighbours - that being at least 5 examples of houses that have been replaced with bigger and higher ones on a street of just 22 properties, i.e. just under a quarter of them; and
 - although not a replacement house, the consent granted in respect of number 20 has also resulted in the house on this plot being over twice the size it originally was, and it being necessary to also take this into account when considering the scale of development that should be considered appropriate on the application site.
- 2.8 Lastly in this respect, the Reports of Handling for the above applications also confirm the level of density that is generally seen in the area with, for example, the Report of Handling for the new house at number 15 Kirk Crescent South (planning application reference 160075) noting that existing houses at that time had plot ratios of up to 35%.
- 2.9 To fully appreciate the mix of properties that make up the application site context as set out above, and the density of development that these represent, our clients would encourage members of the Local Review Body to carry out a site visit, in addition to which photos of some of the properties referred to above are provided at Appendix One by way of illustrating the nature and scale of these, and how these compare to the properties that they have replaced.

3 Proposed development

3.1 As noted above, the application site context has duly informed the design of the proposed house for which planning permission is sought, as set out in the Planning Statement. In particular in this respect, it should be noted that:

- as also highlighted above, the design closely reflects that of the house at 15 Kirk Crescent South, in terms of its form, footprint and height;
- with regards to height specifically, whereas the Report of Handling for the application describes the house as appearing as 2 storeys, the house has been designed so that the roof descends down over the upper-level accommodation, rather than being wholly on top of it, with this described as being 1.5 storeys high in the Planning Statement, or could be described as being 1.75 storeys high at most; and
- although the proposed house as a whole measures 19.5m in depth at the longest point, and 13.8m wide at the widest, the Report of Handling does not make it clear that this includes a 5.5m x 6.7m single storey element to the rear, such that the main body of the house is just 14m deep, with the single storey nature of the rear part of this, combined with the fact that this is less than half the width of the rest of the house, meaning that the overall massing is clearly significantly less than that of a whole house of 19.5m x 13.8m would be. Further, this is particularly so as the topography of the site means that the single storey element sits approximately 80cm lower than the main body of the house, at a level where it will have no impact on neighbours in any respect.

3.2 Also in terms of the design of the proposed house and how this relates to surrounding properties, it should be noted that the 3D renders that were submitted with the application [Documents 8 and 9] are intended to illustrate the design of the proposed house only, with any elements of neighbouring properties that can be seen in these not being to scale, such that they should not be used to assess the size of the proposed house relative to those.

3.3 Lastly in this respect, it should be noted that the design of the proposed house as described above is intended to preclude the need for any further extensions to be made to this in future, with this then being the maximum level of development that there would be on the site, and our clients would be happy for planning permission to be granted subject to a condition removing the relevant permitted development rights to control this if the LRB wished to do that.

4 Policy context

- 4.1 In considering this Notice of Review, it must be remembered that the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, with the relevant Local Development Plan at the time the application was determined having been the ALDP 2017. As noted above though, this is expected to be replaced with the emerging ALDP 2023 in February 2023, and this will then be the plan against which this Notice of Review needs to be determined. Alternatively, if there is any delay in the adoption of this, the agreed plan will still be a significant material consideration, and will need to be given due weight as such.
- 4.2 This is of particular significance in this case as, although the relevant policies of the emerging plan substantively reiterate those in the adopted ALDP (with this confirmed in the Report of Handling, as noted above), there is to be a significant change to the status of guidance published in association with this. Specifically, whereas Supplementary Guidance associated with the adopted ALDP has the same status as the ALDP itself, this will not be the case for most guidance associated with the PLDP, including guidance on the sub-division and redevelopment of curtilages, a draft version of which was approved for consultation in December 2022 [Document 18]. This then needs to be taken into account when considering the weight to be given to the provisions of the guidance, with this addressed in more detail in section 6 below.
- 4.3 Lastly, as NPF4 is also to become part of the Development Plan when this is adopted, due weight needs to be given to the support that this lends to the application being approved as well, with the Report of Handling confirming that the proposed new house complies with the overall approach of NPF4, as set out above. In particular, and while there have been some changes to the wording since the Planning Statement was drafted, NPF4 encourages the efficient use of land, the delivery of new houses close to local facilities, and increasing the density of settlements, all as set out in that. And, as the house proposed in this case would contribute to the realisation of NPF4's aspirations in these respects, this supports the application being approved.

5 Material considerations

- 5.1 Alongside the relevant Development Plan policies, there are a number of material considerations which also need to be taken into account when considering the application, in particular various consents that have been granted to either replace or extend existing houses in close proximity to 12 Kirk Crescent South, all as referred to above.

- 5.2 In this respect, it is noted that the Report of Handling seeks to downplay the significance of some of the above decisions, stating in particular that those in respect of numbers 15 and 22 Kirk Crescent South do not justify approval of the appeal application on the basis that these were approved under a previous local development plan, with this also being the case for the new house at number 11. However, while the plan may have changed, there have been no material changes to the relevant policies within this, and there is thus no reason as to why these applications would be decided any differently now than they were then, or any reason not to give weight to these as precedents for the size of house that may be considered appropriate in this location as a result, both in absolute terms, and when compared to the size of the original house on the plot. In particular, whereas the new house at 15 Kirk Crescent South was approved under the Aberdeen Local Development Plan 2012 (ALDP 2012), Aberdeen City Council published a table at the time the ALDP 2017 was being prepared to show how the plans compared [Document 23], with this confirming that Policy H1 was carried forward with no changes made to this. As such, a house in this location of the same size and design should be considered equally acceptable under the ALDP 2017 as it was under the ALDP 2012. And, with the only difference between Policy H1 in the ALDP 2023 compared to the ALDP 2017 being that there is no longer the same requirement to comply with Supplementary Guidance as set out above, a house of the same size and design should also be considered equally acceptable in terms of this.
- 5.3 Further, whereas the Report of Handling seeks to distinguish the proposed house from the recently approved house at 4 Kirk Crescent South (planning application reference 200157/DPP), this does not alter the relevance of that application in terms establishing how the site context should be assessed, with the Report of Handling for planning application reference 200157/DPP making it clear that the site context comprises both sides of the street, and includes houses of up to 2 storeys in height, as set out above.
- 5.4 Lastly, it should also be noted that the Report of Handling is silent on the decisions in respect of 20 Kirk Crescent South and 7 Cults Gardens, with there therefore being no reason not to give due weight to these, and the conclusions reached in terms of how the character of the area should be assessed in the Report of Handling for them as set out above.

6 Reasons for refusal

- 6.1 Although the Decision Notice gives just one reason for refusal of the application, there are a number of different elements to that, each of which is addressed below.

The proposed replacement dwellinghouse represents over development of the site, both in terms of building footprint and massing, with an impact on the residential amenity of neighbouring properties.

6.2 As set out in paragraph 5.6 of the Planning Statement, the ALDP 2017 does not define what constitutes overdevelopment, with this also being the case with the ALDP 2023. However, as also set out in paragraph 5.6 of the Planning Statement, this is generally understood to be a level of development that is excessive in terms of the impact that it has on the established character and amenity of a site and the surrounding area as a result of a combination of a number of factors, including the number and size of buildings on a site, and the intensity of a site's use. And, while the Report of Handling raises concerns about the size of the proposed new house, and the impact of this on the surrounding area, the starting point in this regard is that the proposal does not increase the number of buildings on the site, nor does it result in any intensification of the site's use, with this continuing to be the site of a single dwellinghouse, and thus clearly not overdevelopment in this respect. This then just leaves the question of the size of the proposed house, and any potential impacts arising from that, with the concerns raised in the Report of Handling in these respects addressed below.

Size

6.3 In terms of size of the proposed house, the Report of Handling places significant weight on the terms of the **Supplementary Guidance: the sub-division and redevelopment of residential curtilages** adopted under the ALDP 2017. As highlighted above however, there is no longer to be adopted Supplementary Guidance of this nature under the ALDP 2023 and, while there will still be guidance on the redevelopment of residential curtilages, it will not be a statutory part of the development plan and will not carry the same weight. At the same time, while the emerging guidance retains the general guideline that no more than a third of the total site area for each curtilage should be built on, it is expressly stated in the guidance that this is only a general guide. Rather the starting point is that density should reflect that of the surrounding area, an assessment of which is provided above, with it being clear that this would be the case in this instance.

6.4 In terms then of how the size of the proposed house would compare to existing houses on the street, and the densities of those, it should be noted that:

- by the Council's own assessment (see, for example, the Report of Handling in respect of planning application reference P160075, as referred to above), existing properties in the area have plot ratios of up to 35%;

- in the absence of Kirk Crescent South being in a Conservation Area or any of the properties being listed, and given the large size of the plots, there is scope for plot ratios to be increased to up to 50% through the addition of extensions implemented under permitted development rights, and indeed substantial extensions have been added to a number of the houses here on this basis;
- excluding the single storey element to the rear of the proposed house, this has a footprint of just 180m² (smaller than any of the other replacement houses referred to above), resulting in a plot ratio of just 32.2% (this being both within the parameters of existing ratios in the area and less than the 33% guideline included in the Council's guidance);
- again excluding the single storey element to the rear, the proposed house would extend less than 1m past the rear elevation of the neighbouring property at number 14 and less than 3m past the rear elevation of the neighbouring property at number 10 (which, in the context of the size and orientation of these properties' gardens means that there would be no impact on the amenity of these, as set out in more detail below); and
- as well as leaving an area of garden for residents of 12 Kirk Crescent that complies with the Council's guidance in terms of length, this would also be similar in size, or bigger, than the gardens associated with other properties in the area.

6.5 At the same time, it is recognised that size relates to more than just footprint, with the Report of Handling also raising concerns about the height and overall volume of the proposed house. In this respect however, it should be noted that:

- whereas the Report of Handling describes the area as being characterised by single and 1.5 storey properties, this is at odds with the Council's own assessment of this in the context of other recent applications, in which it has been recognised that the area includes properties of up to 2 storeys high, as set out above;
- with regards to ridge height specifically, the reference in the Council's Supplementary Guidance to the need for the ridge and wallhead heights to be no higher than those of adjoining dwellinghouses is wholly irrelevant in this case, given that there are no adjoining houses, and so no consideration should be given to this; and
- the approval of the other recent applications for replacement houses nearby make it clear that there is no reason for an existing house not to be replaced by a new one that is bigger in all respects, with the proposed house being in keeping with

the scale of the houses erected pursuant to those applications both in absolute terms and when compared to the size of the existing house on the site, as also set out above.

- 6.6 Taking the above into account, there is no basis for concluding that the proposed house constitutes overdevelopment of the site in terms of its size.

Fallback position

- 6.7 As noted above and set out in more detail in paragraph 3.1 of the Planning Statement, the size of the proposed house also has to be assessed against the scale of development that could be delivered under permitted development rights, with case law establishing the need to take this into account as a material consideration (see *Mansell v Tonbridge and Malling BC* [Document 24]). Specifically in this respect, the sizes of the existing house and garden mean that it would be possible under permitted development rights to erect a single storey extension of up to 125m², giving a total area of 250m², which would result in the footprint of development being almost 15% bigger than that which is currently proposed. And, while it is recognised that this would allow a single storey extension only, and it is necessary to consider the volume of the proposed house as a whole, this still needs to be taken into account when considering the footprint of the proposed development, and the acceptability of this in terms of how much of the site would then be developed accordingly.

Impact on character and amenity of area

- 6.8 In terms of any potential impact on the character or amenity of the area, the former has been addressed above, with the proposed house complementing the established character of the area by being consistent with existing houses here in terms of scale and design, and there being no impact on the character of this as a result.
- 6.9 In terms of any potential impact on amenity, in respect of which the concerns raised in the Report of Handling relate to the extent to which the length of the rear garden of number 12 would be reduced, and the potential for overlooking, overshadowing, and reduced daylight affecting neighbouring properties at numbers 10 and 14, each of these is addressed in turn below.

Length of garden associated with number 12

- 6.10 The Report of Handling for the application confirms that this would comply with the Council's guidance on garden lengths, such that there is no reason to refuse the application due to the length of this.

Overlooking

6.11 With regards to the potential for overlooking of the neighbouring properties at numbers 10 and 14, it is again necessary to compare any potential impact to both the status quo and the fallback position of what could be done under permitted development rights, in terms of which it should be noted that:

- the house at number 4 has extensive glazing at upper floor level, with no concerns about the potential for this to result in overlooking having been raised when the application for that house was approved, and there is no reason to consider the potential for overlooking from the proposed house to which the appeal application relates to be any greater than it would have been in that case, or for this to be considered unacceptable when that was not; and
- a rear dormer could be added to the existing house at 12 Kirk Crescent South under permitted development rights, with the proposed house resulting no more overlooking than that would, and indeed, the proposed house would have less of an impact, given that this extends beyond the rear elevations of the neighbouring houses, and there would thus be less overlooking of the immediate rear of these than there could be from a dormer for which no planning application would be needed.

6.12 Taking the above points into account, there is no unacceptable overlooking from the proposed house which would justify the refusal of the application for this reason.

Overshadowing/loss of daylight

6.13 Lastly, with regards to the potential for the proposed house to result in any overshadowing/loss of daylight, it should again be noted that the main body of the proposed house would extend no more than 3m further into the garden than the existing house does, with the size and orientation of the neighbouring gardens meaning that any impact would be negligible. Related to which, it should be noted that planning permission (planning application reference 201610/DPP) was recently granted for the replacement of the existing house at 4 Kirk Crescent North (which backs onto Kirk Crescent South, and has a similar orientation to 12 Kirk Crescent South) with a 1.5 storey property that extends further into the garden than the original one did by a similar amount to that proposed by way of this application, with the Report of Handling for that [Document 25] making it clear that any potential impact on daylight and sunlight would not be sufficiently significant to warrant the application being refused. And, taking into account the similarities between the scale and orientation of the properties, and the limited nature of any impacts that might arise

in both case as a result, there is then no reason to reach a different conclusion in respect of the appeal application now. Further, this is particularly so as the proposed house has been designed with a hipped roof to avoid overshadowing, with any potential impact in this respect minimised as a result, as set out in the Planning Statement.

the design is not consistent or in keeping with the established character of development, with the proposed dwellinghouse having the appearance of a two storey property with a vertical emphasis due to the inclusion of twin facing gables. As such its scale and massing are inappropriate with an eaves and ridge height that is uncharacteristic of the surrounding area.

6.14 In terms of design, the extent to which the proposed house is in keeping with the established character of development in the area has been addressed above, including in terms of its scale and massing, demonstrating that that there is no justifiable reason to refuse the application on the basis of these points.

6.15 Related to this, whereas this reason for refusal refers to the proposed house having the appearance of a 2-storey property, it should be noted that:

- as highlighted above, this is very similar in appearance to the recently erected property at 15 Kirk Crescent South, with both having similar twin facing gables, and the proposed house being just 10cm higher than 15 Kirk Crescent South is, yet the Report of Handling for the planning application for that house (planning application reference 160075) describes that as a 1.75 storey house, and there is no justification for describing the height of the proposed house to which the appeal application relates any differently; and
- even if this was any basis for assessing this as a 2-storey house rather than a 1.75 storey one, this would still be consistent with the established pattern of development, given that this includes properties up to this height as also set out above, with there still being no reason to refuse the application on the basis that it would not be as a result.

6.16 Further, whereas the Report of Handling also raises concerns about how the design of the proposed house compares to the original one, stating that it differs too much from this, this is not a material planning consideration. Indeed, many of the replacement houses referred to above have differed substantially from the original houses on those plots (as expressly acknowledged in the Reports of Handling for these and clearly shown on the photos included in Appendix One), with the relevant test being whether

this is still in keeping with the overall character of the area , which the house proposed in this instance would be, for the reasons given above.

- 6.17 Lastly in terms of design, the Report of Handling queries how the front and rear curtilages of the proposed house would be finished, stating that details have not been provided. It should though be noted that there are notes on the site plan (plan reference A1273-P-01-002) [Document 3] which detail the boundary finishes and, if any further detail is sought, this can be conditioned. As such, this is not a legitimate reason for refusing the application.

the proposal fails to comply with Policy H1 - Residential Areas, The Sub-division and Redevelopment of Residential Curtilages Supplementary Guidance and Policy D1 - Quality Placemaking by Design of the current Aberdeen Local Development Plan 2017 and Policy H1 - Residential Areas, Policy D1 - Quality Placemaking and Policy D2 - Amenity of the Proposed Aberdeen Local Development Plan.

- 6.18 On the basis that it has been demonstrated above that the proposed house would not constitute overdevelopment of the site, with this having no impact on the residential amenity of neighbouring properties as a result, and that the design is in keeping with the established character of development in the area, there is no reason to conclude that the application does not comply with the development plan policies cited above. Rather, for the reasons given in this statement and in the Planning Statement, it should be concluded that it does comply with the development plan, and is also supported by relevant material considerations, most notably various consents that have been granted to either replace or extend other houses close by with substantially larger ones, with there being no reason to refuse this application given that those were approved.

7 Conclusion

- 7.1 For the reasons given in this statement, it is clear that the reasons for refusal of the application are not justified and it should instead be approved on the basis that this complies with the development plan and is supported by relevant material considerations, as set out above.

Aurora Planning Limited

8 February 2022

Appendix One – photos of previously replaced houses on or accessed from Kirk Crescent South



15 Kirk Crescent South



15 Kirk Crescent South – original house (note the significant change in both height and footprint)



5 Kirk Drive (formerly 22 Kirk Crescent South)



22 Kirk Crescent South/5 Kirk Drive – original house (note the significant change in both height and footprint)



7 Cults Gardens – vehicular access and view from Kirk Crescent South



7 Cults Gardens – original house as seen from Kirk Crescent South (note significant change in both height and footprint)



4 Kirk Crescent South



4 Kirk Crescent South – original house (note the significant change in footprint)



11 Kirk Crescent South



11 Kirk Crescent South – original house (note significant change in footprint in terms of how far back the property extends)

Appendix Two: List of documents

Planning Application Documents

- 1 Application Form
- 2 Location Plan
- 3 Existing and Proposed Site Plans
- 4 Existing Ground Floor Plans and Elevations
- 5 Proposed Ground Floor Plan
- 6 Proposed First Floor Plan
- 7 Proposed Elevations
- 8 3D Image – Render 1
- 9 3D Image – Render 2
- 10 Planning Statement
- 11 June – Sun Study
- 12 Preliminary Roost Assessment
- 13 Response to 34 Manor Place Objection
- 14 Report of Handling
- 15 Decision Notice

Policy Documents

- 16 Aberdeen Local Development Plan 2023
- 17 National Planning Framework (NPF4)
- 18 Aberdeen Planning Guidance 2023: Sub-division and Redevelopment of Residential Curtilages (DRAFT)

Other Documents

- 19 Report of Handling for Planning Application Reference 150043
- 20 Report of Handling for Planning Application Reference 190691/DPP
- 21 Report of Handling for Planning Application Reference 200157/DPP
- 22 Report of Handling for Planning Application Reference 160075
- 23 Table comparing policies of ALDP 2012 and ALDP 2017
- 24 Mansell -v- Tonbridge and Malling BC
- 25 Report of Handling - Planning Application Reference 201610/DPP

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Policy Documents

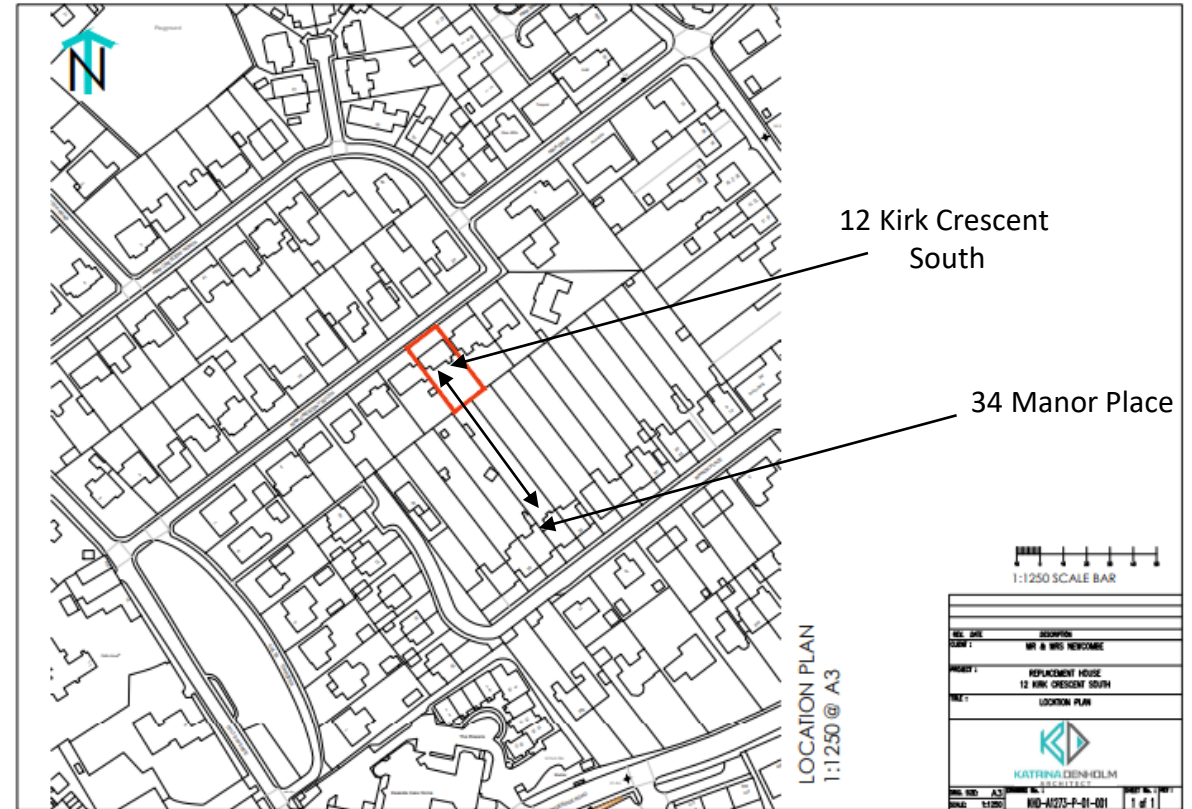
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12 Kirk Crescent South – Rear Views & House Location



View towards 34 Manor Place from 12 Kirk Crescent South roof skylight window

Distance from rear of 12 Kirk Crescent to 34 Manor Place rear ca. 75m

Kirk Crescent South – Rear Views of No 10 & No 16



Rear view 10 Kirk Crescent South upstairs windows looking towards 34 Manor Place



Rear view 16 Kirk Crescent South upstairs windows looking towards 34 Manor Place

Signed (authorised Officer(s)):

7 CULTS GARDENS, CULTS

DEMOLITION OF EXISTING PROPERTY AND GARAGE. ERECTION OF NEW 1.5 STOREY DWELLINGHOUSE AND DETACHED GARAGE, RECONSTRUCTION OF BOUNDARY WALLS

For: Mr & Mrs David Gair

Application Type : Detailed Planning
Permission
Application Ref. : P150043
Application Date : 12/01/2015
Advert : Can't notify
neighbour(s)
Advertised on : 11/02/2015
Officer : Gavin Clark
Creation Date : 5 March 2015
Ward: Lower Deeside (M Boulton/A
Malone/M Malik)
Community Council: No response received

RECOMMENDATION: Approve subject to conditions

DESCRIPTION

The application site, which extends to approximately 750 square metres, is located on the eastern side of Cults Gardens, Cults at its junction with Kirk Crescent South. A single storey dwellinghouse and detached domestic garage currently sit on the site and are proposed for demolition. The surrounding area is residential in nature, and includes a mixture of single, one-and-a-half and two storey dwellings.

RELEVANT HISTORY

None

PROPOSAL

The application seeks detailed planning permission for the erection of a 1 ½ storey dwellinghouse, reconstruction of boundary walls and erection of a detached domestic garage on a plot extending to approximately 750 sqm.

The proposed dwelling would have an overall height of approximately 6.7m, depth of 19m (9.8m excluding the single storey extension) and would have an overall width of 13.8m. A single storey extension would also be located to the rear, which would measure 9.2m in depth, 5m in height and 6.9m in width. The dwellinghouse and garage would have a footprint of approximately 224 sqm and therefore a plot coverage of 29.9% The dwellinghouse would be finished in a variety of materials including concrete block, Scottish granite (on part of the front elevation) and a slate roof. Three cat-slide dormers would be located on the front elevation, with one on the rear; these would measure approximately 1.77m wide x 2.5m in height.

The proposal would include a family room/ bedroom (with en-suite), lounge area, dining space, utility room, study, and kitchen at ground floor level and two bedrooms, a bathroom and a store at first floor level.

The proposal would also include a detached domestic double garage, located to the rear of the dwellinghouse, and measuring 5.9m x 5.9m with an overall height of 4.2m. The boundary treatment would include granite pier capping, fyfestone blocks and k-rend render and timber boarding. This would be located along the boundary with Kirk Crescent South. The Cults Gardens boundary would be a k-rend render wall with a maximum height of approximately 775mm.

A new access would be created on Kirk Crescent South.

Supporting Documents

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at - <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref.=150043>

On accepting the disclaimers enter the application reference quoted on the first page of this report.

CONSULTATIONS

Roads Development Management – no objection subject to the insertion of informatives in relation to the proposed access and visibility splays.

Environmental Health – no observations.

Communities, Housing and Infrastructure (Flooding) – no observations.

Community Council – no observations.

REPRESENTATIONS

None

PLANNING POLICY

Aberdeen Local Development Plan

Policy D1: Architecture and Placemaking: states that, to ensure high standards of design, new development must be designed with due consideration for its context and make a positive contribution to its setting.

Policy D2: Design and Amenity: states that, in order to ensure the provision of appropriate levels of amenity the following principles will be applied: privacy shall be designed into higher density housing; residential development shall have a public face to the street and a private face to an enclosed garden or court; all residents shall have access to sitting out areas; parking must not over dominate the space; individual flats or houses within a development shall be designed to make the most of opportunities offered by the site for views and sunlight; development proposals shall include measures to design out crime and design in safety; and external lighting shall take into account residential amenity and minimise light spillage into adjoining areas and the sky.

Policy H1: Residential Areas: states that, within existing residential areas, proposals for new residential development will be approved in principle if it: does not constitute overdevelopment; does not have an unacceptable impact on the character or amenity of the surrounding area; does not result in the loss of valued open space and complies with Supplementary Planning Guidance on both Curtilage Splits and House Extensions.

Policy R7: Low and Zero Carbon Buildings: states that all new buildings, in meeting building regulations energy requirements, must install low and zero carbon generating technology to reduce the predicted carbon dioxide emissions by at least 15% below 2007 building standards.

Proposed Aberdeen Local Development Plan

- Policy D1: Quality Placemaking by Design
- Policy H1: Residential Areas
- Policy R7: Low and Zero Carbon Buildings, and Water Efficiency

Supplementary Guidance (SG)

- Sub-Division and Re-Development of Residential Curtilages

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, 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.

Principle of Development

The proposed dwellinghouse is located within an existing residential area. Policy H1 (Residential Areas) sets out clearly that in principle development will be permitted as long as it does not constitute overdevelopment; does not have an unacceptable impact on the character or amenity of the surrounding area; and complies with the Subdivision and Redevelopment of Residential Curtilages SG.

Level of Development

The proposed dwellinghouse and garage would cover an area extending to approximately 225 sqm and would cover a footprint larger than the previous dwellinghouse on site. The height of the dwellinghouse would also be approximately 6.7m. The dwelling would cover a larger footprint (the existing dwelling and garage cover 20% of the plot, whereas the new dwelling and garage would cover approximately 30% of the plot) than the previous single storey property. The Council's Supplementary Guidance on the Sub-Division and Redevelopment of Residential Curtilages sets out in general that no more than 33% of a residential curtilage should be developed. The surrounding area includes a variety of plot coverages ranging from 17 – 24% along Cults Gardens and 33% for the dwellinghouse to the ear of the site on Kirk Crescent South. In this case, the residential curtilage extends to approximately 750 sqm with the footprint of the proposed dwellinghouse and garage at around 225 sqm. This would result in plot coverage of approximately 29.8%. Although this is slightly higher than those along Cults Gardens it is not dissimilar to a number of properties along Kirk Crescent South. The site would not appear overly developed compared to those in the surrounding area and the level of development is considered acceptable.

Design/ Amenity

The proposal would replace a single storey dwellinghouse and detached domestic garage/ store of little architectural merit. The replacement dwellinghouse would be of a larger scale than what currently exists on site. The proposal would also include a detached double garage and the construction of replacement boundary treatments. The proposed design has been reduced in size and scale since it was originally submitted, and has been simplified, with the four double window dormers reduced to single window dormers. The rear

extension has also been reduced so that it would protrude approximately 9.8m from the rear of the building (the original submission showed a projection of approximately 10.6m).. The use of granite on part of the front elevation and the proposed slate roof would also complement the character and appearance of the area. Finalised material samples would be requested via planning condition.

The rear single storey element has also been sited closer to Kirk Crescent South so that there would be no impact on adjacent properties and would allow the occupiers of the property to have access to a useable outdoor area.

The proposal would have a public face to a street and a private face to rear garden, occupiers would have access to a sitting out area, and the dwellinghouse would have appropriate levels of daylighting and sun lighting.

Overall, the proposal is seen to have been designed with due consideration for its context and is considered to be an acceptable addition to the site, the proposal accords with Policy D1 (Architecture and Placemaking) and D2 (Design and Amenity) of the ALDP.

Impact on the Character and Appearance of the Surrounding Area

The pattern of development in the surrounding area includes a mixture of single, one-and-a-half and two storey properties. Those along Cults Gardens are predominantly single storey in height, although one is a two storey dwelling. The property sits on a corner site and would be visible from both Cults Gardens and Kirk Crescent South. The proposal would provide a comfortable form and scale of development and the dwelling would have a positive impact on the character and appearance of the surrounding area as well as the surrounding streetscape, and adequate screening and planting would be provided, similar to what currently exists. The proposed design is considered to be acceptable and whilst the proposal would be more visually dominant than the current dwellinghouse it would not have a significant detrimental impact on the character and appearance of the surrounding area.

Impact on Residential Amenity

The proposal would have a no impact on properties in the surrounding area. Whilst there would be a dormer on the rear elevation, this would look onto a neighbouring gable (which is to be located approximately 23m away) and would not overlook any part of the property to the rear (on Kirk Crescent South). The dormers to the front would overlook an area of open space, and no windows would be located on the elevation facing 6 Cults Gardens. It is therefore considered that there would be no impact in terms of overlooking and impact on privacy.

Transportation Issues

Access to the site would be taken from the rear (Kirk Crescent South) and would allow access to the double garage. Acceptable off-street parking would be provided and is considered appropriate. Informatives have been inserted to the consent in relation to visibility splays and the construction of the new access itself. The access layout is considered acceptable.

Low and Zero Carbon Buildings

The application does not include any details to demonstrate how Low and Zero Carbon Generating Technologies will be incorporated into the flatted properties, or alternatively how the buildings could achieve deemed compliance with the Council's published 'Low and Zero Carbon Buildings' Supplementary Guidance. On this basis it will be necessary to attach an appropriate condition to secure such information should planning permission be approved and to ensure compliance with Policy R7 (Low and Zero Carbon Buildings) of the ALDP.

Proposed Aberdeen Local Development Plan

The Proposed ALDP was approved at the meeting of the Communities, Housing and Infrastructure Committee of 28 October 2014. It constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to public consultation through the Main Issues Report; and
- the level of objection raised in relation these matters as part of the Main Issues Report; and
- the relevance of these matters to the application under consideration

The foregoing can only be assessed on a case by case basis. In relation to this particular application, the policies in the Proposed ALDP substantively reiterate those in the adopted local development plan and the proposal is acceptable in terms of both plans for the reasons already previously given.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

The demolition of the existing dwellinghouse and erection of a replacement dwellinghouse and garage is considered to be acceptable. The development would not constitute over development of the plot, and its design is considered to be acceptable and would not detract from the character and appearance of the surrounding area and would provide an acceptable level of amenity for occupiers. The proposed access arrangements are also considered to be acceptable. As a result the proposal accords with Policies H1 (Residential Areas), D1 (Architecture and Placemaking), D2 (Design and Amenity) and R7 (Low and Zero Carbon Buildings) of the Aberdeen Local Development Plan as well as the associated Supplementary Planning Guidance in relation to the sub-division and re-development of residential curtilages.

The proposal does not offend the general principles of policies H1 (Residential Areas), D1 (Quality Placemaking by Design) or R7 (Low and Zero Carbon Buildings, and Water Efficiency) of the proposed local development plan.

CONDITIONS

it is recommended that approval is given subject to the following conditions:-

(1) that no development pursuant to the planning permission hereby approved shall be carried out unless there has been submitted to and approved in writing for the purpose by the planning authority a further detailed scheme of landscaping for the site, which scheme shall include indications of all existing trees and landscaped areas on the land, and details of any to be retained, together with measures for their protection in the course of development, and the proposed areas of tree/shrub planting including details of numbers, densities, locations, species, sizes and stage of maturity at planting - in the interests of the amenity of the area.

(2) that all planting, seeding and turfing comprised in the approved scheme of landscaping shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a size and species similar to those originally required to be planted, or in accordance with such other scheme as may be submitted to and approved in writing for the purpose by the planning authority - in the interests of the amenity of the area.

(3) that no development shall take place unless a scheme detailing all external finishing materials to the roof, walls and boundaries of the development hereby approved has been submitted to, and approved in writing by, the planning authority and thereafter the development shall be carried out in accordance with the details so agreed - in the interests of visual amenity.

(4) that the dwelling hereby approved shall not be occupied unless a scheme detailing compliance with the Council's 'Low and Zero Carbon Buildings' supplementary guidance has been submitted to and approved in writing by the planning authority, and any recommended measures specified within that scheme for the reduction of carbon emissions have been implemented in full - to ensure that this development complies with requirements for reductions in carbon emissions specified in the City Council's relevant published Supplementary Guidance document, 'Low and Zero Carbon Buildings'.

INFORMATIVES

Vehicular access to the driveway should be by means of a standard footway crossing not more than 5m wide. The proposed closing of existing access and construction of a new access will be done by Aberdeen City Council (ACC). The applicant is responsible for all costs involved in construction and reinstatement of a footway crossing and should be advised to contact the Road Network Maintenance Unit (Tel 241 500) at least 6 weeks prior to any work starting on site, after planning permission has been granted to arrange for a detailed estimate for the cost of the works. The applicant is required to make payment in advance of these works being carried.

The driveway should be internally drained, with no surface water discharging onto the public road.

Loose material (e.g. stone chippings etc) must not be used to surface the first 2 meters length next to the footway.

The gradient of a driveway should generally not exceed 1:20 with an absolute maximum of 1:15 to avoid parked vehicles from slipping during freezing conditions and causing a road safety hazard to other road users.



Strategic Place Planning

Report of Handling

Site Address:	20 Kirk Crescent South, Aberdeen, AB15 9RR
Application Description:	Erection of single storey extension to rear with terrace above and external access stair
Application Ref:	190691/DPP
Application Type:	Detailed Planning Permission
Application Date:	24 April 2019
Applicant:	Mr Gordon Dewar
Ward:	Lower Deeside
Community Council:	Cults, Bielside and Milltimber
Case Officer:	Ross McMahon

RECOMMENDATION

Refuse

APPLICATION BACKGROUND

Site Description

20 Kirk Crescent South is a one-and-a-half storey detached dwelling with a western facing principal elevation. The property has an integrated single garage covered within the 1989 grant of planning permission (see planning history below) and there is a large rear garden to the east of the property.

The site is bounded to the north by 5 Kirk Drive, a two-storey dwelling with its principal elevation to the north and its garden area to the west (i.e. side) rather than the rear of the dwelling. Whereas to the south, 18 Kirk Crescent South provides accommodation over one-and-a-half floors and occupies a corner plot with the garden area to the rear.

In terms of characterisation, no one style of form of dwelling is prevalent in the area. There have been extensions to dwellings in the area, principally to the rear, typically single-storey.

The site is located within a Residential Area as shown on the Proposals Map to the Aberdeen City Local Development Plan 2017.

Relevant Planning History

Application Number	Proposal	Decision and Date
890449	Extension to dwelling	Approved 27.04.1989
170422/DPP	Single storey extension to rear	Approved 09.06.2017

181858/DPP	Erection of single storey extension to rear with terrace above and external access stair	Withdrawn 20.12.2018
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APPLICATION DESCRIPTION

Basis of Application

The Applicant was advised by correspondence of the 20th of June 2019 that the length of the extension should be reduced (i.e. in line with the drawing appended to the covering letter), together with the omission of the roof top terrace and external staircase. The Applicant notified the Local Planning Authority on the 28th of June 2019 the intention that the Application should progress as submitted.

Description of the Proposed Development

In brief, planning permission is sought for the erection of a single-storey flat roofed extension to the rear (north-east) elevation of the dwelling. The roof of the extension would act as a roof top terrace that is surmounted by a glass balustrade and is accessed via an external staircase.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PQGJRYBZN4200>

- *Supporting Statement*

CONSULTATIONS

Cults, Bielside, and Milltimber Community Council

Response 2nd June 2019:

While we would normally avoid involvement in neighbour disputes it does appear that infringement of privacy is an issue in this case and trust that it will be given due weight in the eventual determination of this matter. We understand that the neighbour has no objection to the single storey extension per se.

Response 26th June 2019:

Further to my letter of 2 June 2019 I have now had the opportunity to meet with the applicant Mr Gordon Dewar at his property. While the issue of privacy is clearly a concern to his neighbour, I am satisfied that Mr Dewar is very keen to do anything reasonably practicable to allay his concerns which I think may be perceived rather than real.

REPRESENTATIONS

One representation has been received (objection). The matters raised can be summarised as follows:

Objects only to the roof terrace for the reasons of invasion of privacy and loss of amenity and cites:

- It has the size capacity to allow many people to assemble outside at height
- It is located immediately adjacent to our property
- It is located at the same upstairs height as our adjacent bedroom and other private rooms, and associated windows;
- It has the capacity to overlook our private garden patio areas and public rooms; and

- The external staircase is closer again to our property, with further disturbance potential when moving people and materials up and down the stairs.

PLANNING POLICY FRAMEWORK AND MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, regard is to be had to the provisions of the Development Plan and that determination shall be made in accordance with the plan, unless material considerations indicate otherwise.

Aberdeen City and Shire Strategic Development Plan (2014) (SDP)

The purpose of the SDP is to set a spatial strategy for the future development of the Aberdeen City and Shire. The general objectives of the plan are promoting economic growth and sustainable economic development which will reduce carbon dioxide production, adapting to the effects of climate change, limiting the use of non-renewable resources, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility.

The Strategic Development Plan 2014 is now beyond its five-year review period. In the light of this, for proposals which are regionally or strategically significant or give rise to cross boundary issues between Aberdeen City and Aberdeenshire, the presumption in favour of development that contributes to sustainable development will be a significant material consideration in line with Scottish Planning Policy 2014.

The Aberdeen City Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Proposed Aberdeen City & Shire SDP 2020 may also be a material consideration.

Aberdeen City Local Development Plan (2017) (ALDP)

- Policy D1 – Quality Placemaking by Design
- Policy H1 – Residential Areas

Supplementary Guidance (SG)

- Householder Development Guide

EVALUATION

ABERDEEN CITY AND SHIRE STRATEGIC DEVELOPMENT PLAN (2014) (SDP)

In terms of assessment against the SDP, due to the small scale of this proposal the proposed development is not considered to be strategic or regionally significant, or require consideration of cross-boundary issues and, therefore, does not require consideration against the SDP.

MAIN ISSUES

The main issues in this matter are; firstly, the principle of the proposed development; secondly, whether the proposed development in its detailed form would harm the host dwelling / character and appearance of the area; and thirdly, the effect of the proposed roof terrace on the living conditions of neighbouring residents with regard to noise, disturbance and privacy.

Principle of the Proposed Development

ALDP policy H1 addresses those parts of the City designated as residential areas and in principle will support new residential development where, in part, it does not constitute overdevelopment and/or have an unacceptable impact on the character and amenity of the surrounding area.

Therefore, the principle of the proposed development is deemed acceptable subject to the provisions of ALDP policy H1 and other relevant policies, Supplementary Guidance: Householder Development Guide (hereafter referred to as SG).

Impact upon the Host Building and the Character and Appearance of the Area

The character of an area is more than the visual flow of the type of buildings and their associated materials; it also embraces the juxtapositions between buildings, their setting and the spaces they create.

Both ALDP policies D1 and H1, together with the SG seek to ensure that due regard is had to the impact of development upon the character and appearance of its environs (i.e. context), which includes impact upon the host building in its entirety.

The SG as a principle states that...*any extension or alteration proposed should not serve to overwhelm or dominate the original form of the or appearance of the dwelling and should be visually subservient in terms of height, scale and mass.*

The proposed extension taken in isolation (excluding the roof top terrace, external staircase) is not unattractive and the external finishes including doors and windows are largely unobjectionable in themselves. However, good design when considering the degree of extensions or alterations to be undertaken should have regard to the host dwelling, setting, and in turn local character. It is considered that this was not properly taken into account when considering the degree of extension and alteration to be undertaken. The extant planning permission issued in 2017, despite the comments of the Applicant for the reason set out under the heading of 'Fall-Back', is a factor in the assessment of this issue and cannot be "discarded".

The external staircase has a clear industrial feel and this utilitarian form carries no design aesthetic with regard either to the proposed extension or the host dwelling. This is exemplified on Drawing no/ 335(GA)004 Rev A, where in elevation it appears as a 'fire escape staircase', and the north-east elevation shows the staircase and part of the balustrade immediately outside and halfway up a bedroom window. This aspect of the scheme is an incongruous feature to the extension and host dwelling, and is therefore contrary to policies D1, H1 and the SG of the ALDP.

The extension itself adds some 8 metres to the length of the host dwelling (resulting in a 14 metre projection overall from the dwellings original rear elevation) thereby increasing its current length by some 60%, which in plan view changes what is in essence a simple stepped hipped roofed dwelling to a residence with a clear longitudinal emphasis and with the exercised and extant permission subsumes the original dwelling. One of the aims of the SG is to prevent the incremental expansion of traditional buildings. Therefore, this aspect of the extension is contrary to advise within the SG, policies D1 and H1 of the ALDP.

In terms of design, the extension draws no architectural reference from the host dwelling, and whilst modern extensions can set new standards and add another layer of interest to the host dwelling, this is dependent upon high design quality and understanding of its relationship to the host dwelling and context. The extension fails in both regards. The design quality of the staircase and the balustrade sit stridently against the dwelling and the development as a whole appears as a bolt on addition that conflicts with the eaves line of the rear of the dwelling producing an extension that dominates rather than being subservient to the host dwelling.

Whilst certain elements of the development might, on balance be acceptable, taken as a whole, they visually compound the host dwelling and the resulting development harms both the host dwelling and character of the area and is therefore at variance with policies D1, H1 and the SG of the ALDP.

Amenity

It is accepted that privacy and the protection of general amenity constitutes a material consideration in determining development proposals and is an important design objective in ensuring that residents of properties bounding any development site and those occupying new accommodation feel at ease within and outwith their dwellings.

There is a recognition that within suburban environments there will be a degree of overlooking between dwellings and surrounding garden/amenity areas, particularly from above ground floor level albeit almost exclusively from windows. Such views tend to be oblique and where these views are direct, their impact is mitigated by adequate separation distances created by gardens/amenity areas backing onto each other, topography of the land, existing built forms (e.g. boundary walls), or by appropriate design solutions. Policies D1 and H1 of the ALDP which together amongst other things aim to protect the living conditions of all residents are relevant.

The roof terrace 'sits' above the proposed ground floor kitchen extension and is accessed via an external staircase. The roof terrace extends from the rear elevation by approximately 8 metres and is around 3 metres in height, and in the order of 5 metres in depth and includes a roof light servicing the kitchen below. Glazed balustrades over the roof of the kitchen are proposed to be installed on the edges of the 'open elevations'. They would be obscure glazed and 1.8 metres tall on the elevation adjoining the boundary to 5 Kirk Drive, reduced to 1 metre in height to 'south' and 'east' boundaries of the roof.

Due to the elevated position of the roof terrace it is adjacent to the shared boundary with number 5 Kirk Drive. The addition of a roof top terrace could introduce noise and disturbance to resting and sleeping areas and could usher in a new form of disquieting development into the area. However, it is noted that the garden ground to be given over to the extension could be used in such a way (i.e. terrace/sitting out area), and the increase/difference in the quantity of noise and its characteristics arising from a sitting out area at first floor level in this position is difficult to quantify. The raised terrace sits within close proximity to the eaves level of 5 Kirk Drive to its southern elevation, however, the provision of a 1.8m screen to the proposed terrace with extensive site screening beyond would likely 'contain' the lateral projection of noise in this direction to some degree, however accepting that this itself is also difficult to quantify. Taking note of the aforementioned in combination with the absence of upper floor habitable room windows directly facing the terrace (the upper floor bedroom window faces south-west), it is considered that any perceived additional noise disturbance above and beyond that which could reasonably be experienced at present is unlikely to be significant to warrant being a reason for refusal of the application on residential amenity grounds.

Aside from the noise and disturbance associated with the use of the roof terrace, there is the consideration of overlooking affecting the private amenity spaces of surrounding dwellings. The negative impact of this aspect of the proposed development on the amenity currently enjoyed by neighbouring residents of their private amenity spaces (i.e. gardens) is acknowledged by the incorporation of an obscured glazed balustrade to the roof terrace.

However, the glazed balustrade does not preclude views directly into neighbouring gardens and a planning condition cannot control that users of the area should at all times be at a level below the balustrade. In addition, the knowledge that a roof terrace exists, and users could look into their gardens, does constitute a material factor in terms of the impact of development upon residential amenity.

Turning to the external staircase. The use of the staircase could cause some privacy issues. However, such incidents are likely to be transient in nature, in contrast with the overlooking occurring as the result of sitting or standing on the roof terrace for a period of time. It is

considered that planning conditions could not overcome the harm caused by the development in terms of noise or disturbance (limiting its use or activities) or overlooking.

Regarding the comments of the Community Council; residential amenity is a material consideration in the decision-taking process. This includes overlooking, noise and disturbance associated with the use of the roof terrace and perception of being overlooked. On the matter of the applicant being *keen to do anything reasonably practicable to allay his concerns which I think may be perceived rather than real*; as noted above, the most practicable action is to remove the roof terrace, which the Applicant declined to action.

Regarding the planning balance, it is considered that this aspect of the proposed development by reason of overlooking materially harms the amenity of neighbouring residential properties and is therefore contrary to policies D1, H1 and SG of the ALDP.

OTHER ISSUES

The Fall-Back Position

The fall-back position (i.e. what could the Applicant undertake without recourse to a new planning application) is a material consideration in the decision-taking process. Whilst the Applicant in the supporting statement has noted that the 2017 planning permission has been “discarded”, this does not remove the fall-back position in the evaluation process. Indeed, where the possibility of the fall-back position happening is slight, an outside chance, or a possibility, this will suffice to make the position a material consideration.

In this instance, the 2017 grant of planning permission is live (i.e. expires in June 2020) and where there remains a possibility, however faint that the permission could be exercised, then the 2017 permission is a formative consideration in the decision-taking process. Therefore, this permission cannot be ‘discarded’.

Overdevelopment

The Applicant in the supporting documentation has equated overdevelopment to footprint coverage. Whilst the footprint is a consideration in respect of overdevelopment it is not the only one and not the determinative consideration. Overdevelopment in simple terms can be considered as an amount of development (for example the quantity of buildings or intensity of use) that is excessive in terms of impact on local amenity, character, and the resulting development as a whole.

It is considered that the scale and the proportions of the proposed extension in relation to the existing (i.e. host) dwelling and the building in its entirety, coupled to the roof top terrace and external staircase, would appear as an overdevelopment of the site, would be an incongruous addition to the host dwelling, and appear as a cramped form of development which would detract from the character of this part of the area.

It is therefore considered that this aspect of the proposed development is contrary to policies D1, H1, and the SG to the ALDP.

REASONS FOR RECOMMENDATION

1. The proposed development by reason of its composition, form, mass, scale and height will harm the character of the original dwelling and when read with the extant and exercised planning permissions will dominate the form of the host dwelling and will constitute overdevelopment. In addition, the proposed development will harm the character and appearance of the area. The proposed development therefore conflicts with policies D1

(Quality Placemaking by Design) and H1 (Residential Areas) of the Aberdeen Local Development Plan 2017 and the Council's Supplementary Guidance: Householder Development Guide.

2. The proposed roof top terrace will adversely affect the living conditions of neighbouring residents with regard to privacy and overlooking of adjacent private amenity space; contrary to policies D1 (Quality Placemaking by Design) and H1 (Residential Areas) of the Aberdeen Local Development Plan 2017, Supplementary Guidance: Householder Development Guide.

On the basis of the above, it is considered that there are no material planning considerations of sufficient weight that would warrant approval of the application.

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Strategic Place Planning

Report of Handling

Site Address:	Namur, 4 Kirk Crescent South, Aberdeen, AB15 9RR
Application Description:	Erection of 1.5 storey replacement dwelling house with integral garage and associated driveway area to front, including new fencing and shed to rear
Application Ref:	200157/DPP
Application Type:	Detailed Planning Permission
Application Date:	5 February 2020
Applicant:	Mr M Smith
Ward:	Lower Deeside
Community Council:	Cults, Bieldside And Milltimber
Case Officer:	Jamie Leadbeater

RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The site comprises the residential curtilage of a detached 1½ storey dwellinghouse with hipped roof, front and rear dormer, and two chimney stacks on the south-eastern side of Kirk Crescent South in Cults.

The application property is finished in a white dash render with two bay windows on the front, an adjoining single storey garage on the western side elevation, whilst the hipped roof is finished in a burgundy colour tiled. A generous sized garden exists to the rear which is treated by a combination of c. 1m high blockwork walling and vegetation.

The site is neighboured by similar sized detached dwellinghouses on either side and the front garden area of a semi-detached two-storey dwellinghouse on Manor Place beyond the rear garden boundary. With regards to the wider street, Kirk Crescent South comprises a variety of house types which vary in scale and appearance, including modern replacement dwellinghouses.

Relevant Planning History

Application Number	Proposal	Decision Date
191539/DPP	Erection of first floor level extension above garage; straighten hipped gables and re-roofing; erection of single storey rear extension; formation of front and rear dormers; installation of fence, garden shed and enlargement of driveway	24.01.2020 Status: Approved

APPLICATION DESCRIPTION

Description of Proposal

Detailed Planning Permission (DPP) is sought for the erection of a replacement 1½ storey (including box dormers to front and rear) detached dwellinghouse with integrated garage (and associated driveway to front) and flat roof annex to rear, installation of contemporary timber boundary fence (up to 2.25m); erection of garden shed in rear garden.

The roof would be finished in a grey slate roof tiles whilst the integrated box dormers would be finished in grey standing seam cladding to the roof, haffits and solid panels between the casement windows and solid opaque screen windows.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at: <https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q58EWSBZFID00> .

- Drainage Impact Assessment

CONSULTATIONS

ACC - Roads Development Management Team – No objections

ACC - Waste Strategy Team – No issues raised and the Council's Waste Service will expect to collect waste from the kerbside of Kirk Crescent South only.

ACC - Environmental Health – No response received

Cults, Bielside and Milltimber Community Council – No response received.

REPRESENTATIONS

None

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, 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.

National Planning Policy and Guidance

- Scottish Planning Policy

Aberdeen City and Shire Strategic Development Plan (2014) (SDP)

The purpose of the SDP is to set a spatial strategy for the future development of the Aberdeen City and Shire. The general objectives of the plan are promoting economic growth and sustainable economic development which will reduce carbon dioxide production, adapting to the effects of climate change, limiting the use of non-renewable resources, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility.

The Strategic Development Plan 2014 is beyond its five-year review period. In the light of this, for proposals which are regionally or strategically significant or give rise to cross boundary issues between Aberdeen City and Aberdeenshire, the presumption in favour of development that contributes to sustainable development will be a significant material consideration in line with Scottish Planning Policy 2014.

The Aberdeen City Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Proposed Aberdeen City & Shire SDP may also be a material consideration. The Proposed SDP constitutes the settled view of the Strategic Development Planning Authority (and both partner Councils) as to what should be the final content of the next approved Strategic Development Plan. The Proposed SDP was submitted for Examination by Scottish Ministers in Spring 2019, and the Reporter has now reported back. The Scottish Ministers will consider the Reporter's Report and decide whether or not to approve or modify the Proposed SDP. The exact weight to be given to matters contained in the Proposed SDP in relation to specific applications will depend on whether:

- these matters have been subject to comment by the Reporter; and
- the relevance of these matters to the application under consideration.

Aberdeen Local Development Plan 2017 (ALDP)

- Policy H1: Residential Areas
- Policy CI1: Digital Infrastructure
- Policy D1: Quality Placemaking by Design
- Policy NE6: Flooding, Drainage and Water Quality
- Policy R6: Waste Management Requirements for New Developments
- Policy T2: Managing the Transport Impact of Development
- Policy T3: Sustainable and Active Travel
- Policy R7: Low and Zero Carbon Buildings, and water efficiency

Supplementary Guidance (SG)

- Redevelopment and Sub-Division of Residential Curtilages
- Resources for New Development
- Transport and Accessibility

Other material considerations

- Design and layout of dwellinghouse approved under application 191539/DPP

EVALUATION

Principle of development

The site falls within a "Residential Area" designation on the ALDP Proposals Map to which Policy H1 in the Aberdeen Local Development Plan (ALDP) applies. Policy H1 supports new residential development within such areas providing it satisfies the following criteria:

- 1) Does not constitute "overdevelopment";
- 2) Does not have an unacceptable impact on the character and amenity of the surrounding area;
- 3) Does not result in the loss of valuable and valued open space; and,
- 4) Complies with supplementary guidance (the Sub-Division and Redevelopment of Residential Curtilages).

The site falls within an established residential curtilage and therefore the proposal would not result in the loss of valuable or valued public open space. The other requirements of Policy H1 shall be addressed in the paragraphs to follow.

Layout, Siting and Design

The proposed layout of the site, as well as scale and design of the proposed replacement dwellinghouse, whilst significantly different to the existing house, would mirror the house as proposed to be altered and extended under application 191539/DPP, which was approved in January 2020 against policies H1 and D1 in the currently adopted ALDP and therefore the proposal is considered acceptable in these respects. This position also reflects the merits of the outbuilding and fencing associated with the proposed replacement dwellinghouse in respect of their siting, design and impact on the amenity of immediate neighbouring residents.

For avoidance of doubt, therefore, the impact of the development on the character and amenity of the surrounding area is considered acceptable, which includes consideration of how the design of the replacement house would complement the built character of the Kirk Crescent South streetscene as well as the impact of the proposed development on the residential amenity of neighbouring dwellinghouses. It should be noted that the proposed layout, scale, form and design would accord with the relevant expectations for a replacement house in the "The Sub-Division and Redevelopment of Residential Curtilages" supplementary guidance attendant to Policy D1 in terms of the dwellinghouse's placement within the plot and size relative to the plot's parameters to create and acceptable residential amenity environment for prospective occupants.

Access and Parking

The Council's Road Development team has been consulted on the proposal and have no objection to the proposals taking into account the existing and proposed site access and arrangement, as well as on-street parking arrangement. Subsequently, it is considered the proposed replacement dwellinghouse would be served by an appropriate access and level of parking, without undue detriment to the safety of pedestrians and vehicle users along Kirk Crescent South. Formation of the driveway and parking area should be completed, however, prior to occupation of the dwellinghouse which could be controlled by a condition of the planning permission.

Furthermore, from a sustainability perspective, given the site is located within an established suburban setting, the site could reasonably be accessed via range of transport modes, including bus and bicycle.

Overall, the proposal is considered to comply with the relevant requirements of policies T2 and T3 and their attendant supplementary guidance (Transport and Accessibility) in the ALDP.

Drainage

The applicants have submitted a Drainage Impact Assessment (DIA) to determine if the proposed development could be served by an appropriate SuDS (Sustainable Urban Drainage System) and foul water drainage system to prevent localised flooding and to ensure the safe discharge of foul water from the proposed dwellinghouse and its hard surface areas. The assessment recommends use of a large soakaway in the rear garden to deal with surface water generation and foul water will discharge into the existing public sewer connection on Kirk Crescent South, maintained by Scottish Water. Given the site's ground conditions and location within an established sewer network, both proposals are considered reasonable to serve the dwellinghouse. As such, it is considered the proposal satisfies the relevant requirements of Policy NE6 in the ALDP, but implementation of this infrastructure should be controlled by condition to ensure it is functional prior to occupation of the replacement dwellinghouse.

Digital Connectivity, Energy Efficiency and Water Efficiency

No information has been supplied with the application to demonstrate compliance with policies C11 and R7 in the ALDP to establish the development energy and water efficiency merits as well as its likely level of digital connectivity, although given the site's suburban setting it is likely that all relevant requirements of these policies could be satisfied. Subsequently, in granting planning permission, it is considered reasonable and competent to control compliance with these policies

through use of appropriately worded planning conditions.

Strategic Development Plan

In terms of assessment against the Strategic Development Plan, due to the modest scale of this proposal the proposed development is not considered to be of strategic or regionally significant, or require consideration of cross-boundary issues and, therefore, does not require detailed consideration against the SDP.

Proposed Aberdeen Local Development Plan

In relation to this particular application, the policies in the Proposed Aberdeen Local Development Plan 2020 (ALDP) substantively reiterate those in the adopted Local Development Plan and the proposal is acceptable in terms of both Plans for the reasons previously given.

Conclusion

Overall, the principle of development is considered acceptable given the site falls within an established residential area and the layout and design of the proposed replacement house with its associated outbuilding and boundary treatments are considered to be sympathetic to the character of the Kirk Crescent South without unduly jeopardising the level of residential amenity currently afforded to neighbours. Furthermore, given the presence of an existing recently lived in house on the site in an suburban area, there is a very realistic prospect the development would be served by all appropriate infrastructure. As such, subject to the proposed conditions being satisfied, the proposal would comply with all relevant policy requirements in the Aberdeen Local Development Plan 2017. In the absence of any other material considerations dictating otherwise, the application is recommended for approval.

RECOMMENDATION

Approve Conditionally

REASON FOR RECOMMENDATION

The principle of development is considered acceptable as the proposal would comply with the requirements of Policy H1 (Residential Areas) in the Aberdeen Local Development Plan 2017. Furthermore, the layout and design of the proposed replacement is considered sympathetic to its context without adversely impacting on the amenity of neighbouring residents and therefore is considered compliant with Policy D1 (Quality Placemaking by Design) and its attendant supplementary guidance The Sub-Division and Redevelopment of Residential Curtilages in the Aberdeen Local Development Plan 2017. Furthermore, it is considered the proposed replacement dwellinghouse could be appropriately serviced in all respects. As such, in the absence of any other overriding material considerations, the proposal is considered acceptable and therefore the application is recommended for approval.

CONDITIONS

1. Prior to commencement of development, the applicant/developer shall provide full details of the energy efficiency rating of the dwellinghouse hereby approved for approval in writing by the Planning Authority. Once approved, the construction of the dwelling house shall be carried out to a standard which ensures the approved energy efficiency levels can be achieved.

Reason: To ensure compliance with Policy R7 (Low and Zero Carbon Buildings, and water efficiency) in the ALDP 2017 and its associated Supplementary Guidance.

2. Prior to commencement of development, the applicant/developer shall submit details to the

Planning Authority demonstrating that the hereby approved replacement dwellinghouse could be served by up-to-date high-speed digital communications infrastructure.

Reason: To ensure compliance with Policy CI1 (Digital Infrastructure) in the Aberdeen Local Development Plan 2017.

3. Prior to occupation of the replacement dwellinghouse, the vehicular access and parking areas to the house shall be fully formed and operational in accordance with approved drawing no. 3970-101.

Reason: To ensure the dwellinghouse can be served by appropriate infrastructure which contributes to the general enjoyment of the property and minimises use of the residential street for vehicle parking, thus minimising the impact of the development on the local road network.

4. Prior to occupation of the dwellinghouse, all drainage infrastructure set out in the submitted Drainage Impact Assessment (Cameron & Ross, March 2020) including SuDS shall be implemented in full and remain in-situ into perpetuity.

Reason: To ensure that the dwellinghouse is served by appropriate infrastructure and to safeguard the amenity of neighbours' residential amenity from any undue localised flooding to ensure compliance with Policy NE6 (Flooding, Drainage and Water Quality) in the Aberdeen Local Development Plan 2017.

Signed (authorised Officer(s)):

15 KIRK CRESCENT SOUTH, CULTS

ERECT REPLACEMENT DWELLING
HOUSE

For: Mr Alisdair McKenzie

Application Type : Detailed Planning
Permission

Application Ref. : P160075

Application Date : 04/02/2016

Advert :

Advertised on :

Officer : Hannah Readman

Creation Date : 7 March 2016

Ward: Lower Deeside (M Boulton/A
Malone/M Malik)

Community Council: No response received

RECOMMENDATION:

Approve subject to conditions

DESCRIPTION

A detached, modern bungalow with slated pitched roof, hipped gables, beige rendered walls and feature bay window. Located on the north-west side of Kirk Crescent South which is characterised by 1 to 2 storey modern dwellings of mixed designs with generous plots. Several homes have been recently replaced or currently under redevelopment.

RELEVANT HISTORY

None.

PROPOSAL

To demolish existing bungalow and erect 1.75 storey, 4 bed dwelling. The replacement measuring c.13.2m in width, 22m in depth along the east elevation and 12.5m to the west elevation, 4m to eaves and 7m to ridge level. The design encompasses a hipped roof, double gable end feature, bay window and integral double garage. Proposed finishes include: slated roof, rendered walls with granite dressings & features, copper cladding above doors, and woodgrain finished window frames/ doors. A block paved driveway and landscaped garden are to the front.

Supporting Documents

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at -

<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref.=160075>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

CONSULTATIONS

Roads Development Management – Informatives on driveway materials and extension of the dropped kerb. No objection;

Environmental Health – No observations;

Flooding – No comment received;

Community Council – No response received.

REPRESENTATIONS

None.

PLANNING POLICY

Aberdeen Local Development Plan (LDP)

Policy H1: Residential Areas

Policy D1: Architecture and Placemaking

Policy D2: Design and Amenity

Policy R7: Low and Zero Carbon Buildings

Proposed Aberdeen Local Development Plan

Policy H1: Residential Areas

Policy D1: Quality Placemaking by Design

Policy R8: Low and Zero Carbon Buildings and Water Efficiency

Supplementary Guidance

The Council's supplementary guidance (SG) "The Sub-division and Redevelopment of Residential Curtilages" and "Low and Zero Carbon Buildings" are relevant to the consideration and determination of this proposal.

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, 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.

Principle of the Development

The site falls within an area designated as residential in the Local Development Plan and as such Policy H1 is applicable. The proposal requires to be considered against a number of criteria, the most relevant of which are; (1) it does not constitute over development; and (2) it does not have an unacceptable impact

upon the character and amenity of the surrounding area. Subject to these criteria, the principle of replacing the existing house is acceptable.

Kirk Crescent South has an established development pattern of individually designed, one to two storey dwellings that see footprints of between 20% and 35% of each plot, with gardens and off road parking areas to the front and good sized gardens to the rear. Most roofs to the road, adding to the character of the street. Overall designs and materials vary greatly and include red brick, granite, render, concrete or slate roof tiles. The addition of a replacement dwelling to this site should seek to complement the established character of the immediate area and be of a sympathetic design.

Impact on Residential Amenity

The SG on 'The Sub-division and Redevelopment of Residential Curtilages' states that as a general principle new residential development should not borrow amenity from, or prejudice the development of, adjacent land or adversely affect existing development in terms of privacy, overlooking, daylighting or sunlighting. This relationship of new residential development to existing dwellings is an important factor to be considered in assessing whether the privacy, amenity, sunlight and daylight of residents of both existing and proposed dwellings would be adversely affected.

The proposed house design does not raise any significant residential amenity issues. Although it is several metres wider than the existing, the proposed dwelling would remain set at least 1.5m off both the east and west boundaries. This distance is considered appropriate for the scale and massing of the proposed dwelling and would prevent any unacceptable overshadowing occurring upon neighbouring gardens. Windows have been considerably located so as not to introduce any direct overlooking. The majority of glazing is to the rear of the property towards the private garden, which extends 18m to other gardens along Kirk Crescent North. The windows to the front create an attractive frontage to the street. Whilst the only windows on gables are at ground floor level which, to the east face an adjacent blank gable and to the west face a garage wall and driveway, thus no loss of privacy to neighbouring homes. Overall the development complies with policy D2 of the LDP, as it would provide a public face to the street, have spacious front and rear gardens which can be enjoyed privately by the occupiers and large internal rooms providing for a great standard of occupier amenity.

Design and Access

The proposed dwelling design depicts common features of the street, taking the form of a 1.75 storey dwelling with a feature bay window, a hipped roof and pitch that slopes away from the road. The building has been carefully positioned on the plot on the consistent building line and would occupy 31% of the site area. This figure would see an increase of 10% in plot coverage towards the higher end of the streets development density pattern, but nonetheless remains acceptable and

in keeping. The stepped back first floor level, feature (but not accessible) front balconies and large use of glazing provides a modern twist to a traditional design which successfully complement each other. There is no particular material palette that dominates the streetscape and therefore the selected materials, mainly slate roof tiles, ivory render and granite dressings, are considered appropriate for the context, in compliance with policy D1. The pitched dormer windows to the rear comply with the Council's dormer design guidelines through the means of being predominantly glazed and located sufficiently away from the roofs edges.

The integral garage meets the Council's minimum space standard for garages, providing usable off-street parking space for two vehicles. A further two vehicles could be accommodated on an area of block paving in front of the garage which could also be used as a turning area. This provision of four off street parking spaces complies with the Council's parking standards for a four bedroomed dwelling, and is to the satisfaction of Roads Development Management Officers. A landscaped front garden would also remain alongside the off street parking area, providing a high standard of visual amenity for the occupiers and general public. A condition has been added to ensure that this planting occurs and is initially maintained.

No details have been provided in relation to the incorporation of low and zero carbon generating technologies, as required by policy R7 and the associated supplementary guidance. However, this matter can be satisfactorily addressed through the application of a condition to the planning permission.

Proposed Aberdeen Local Development Plan

The Proposed ALDP was approved for submission for Examination by Scottish Ministers at the meeting of the Communities, Housing and Infrastructure Committee of 27 October 2015. It constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to representation and are regarded as unresolved issues to be determined at the Examination; and
- the relevance of these matters to the application under consideration.

Policies and proposals which have not been subject to objection will not be considered at Examination. In such instances, they are likely to be carried forward for adoption. Such cases can be regarded as having greater material weight than those issues subject to Examination. The foregoing can only be assessed on a case by case basis. In this instance, no additional considerations are raised.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

The proposed dwelling is of a high design quality that demonstrates due consideration to its context. It would provide a good standard of occupier amenity whilst having no impact upon the residential amenity afforded to neighbours. The form and character of the wider area would be retained, in compliance with Adopted Local Development Policies H1: Residential Areas, D1: Architecture and Placemaking, D2: Design and Amenity, R7: Low and Zero Carbon Buildings, Proposed Local Development Plan Policies H1: Residential Areas, D1: Quality Placemaking by Design, R8: Low and Zero Carbon Buildings and Water Efficiency and the relevant Supplementary Guidance Documents: The Sub-division and Redevelopment of Residential Curtilages and Low and Zero Carbon Buildings.

CONDITIONS

it is recommended that approval is given subject to the following conditions:-

- (1) That the building hereby approved shall not be occupied unless details of low and zero carbon technologies installed have been submitted to and approved in writing by the planning authority - to ensure that the development incorporates low and zero carbon technologies as required by Policy R7.
- (2) That a scheme containing details of the landscaping of the front garden, including the retention of the existing Rowan tree, shall be submitted to and approved in writing by the Local Authority. Thereafter, shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a size and species similar to those originally required to be planted, or in accordance with such other scheme as may be submitted to and approved in writing for the purpose by the planning authority - in the interests of the amenity of the area.

INFORMATIVES

- (1) The vehicular footway crossing required for the access should be constructed by Aberdeen City Council. The applicant is responsible for all costs involved and is advised to contact the Road Network Maintenance Unit at least 6 weeks prior to any works starting on site and arrange for an

estimate for the cost of works. The Road Network Maintenance Unit can be contacted on the following details: tel. 01224 241500, RoElrick@aberdeencity.gov.uk, DanMackay@aberdeencity.gov.uk.

- (2) In relation to condition 1, information on acceptable technologies can be found on page 6 of the Low and Zero Carbon Buildings Supplementary Guidance Document: <http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=55244&sID=14394>
- (3) In relation to condition 2, it is expected as a minimum that the existing Rowan tree in the south west corner of the site is retained and native hedge species are planted adjacent to the front wall. At least 30% of the front garden should remain.

**Main Amemdments from Adopted Aberdeen Local Development 2012 to
Proposed Aberdeen Local Development Plan 2015**

Proposed Plan Ref.	ALDP 2012 Ref.	Amendment
LR1 - Land Release Policy	LR1 - Land Release Policy	Part A brings forward the 2012 ALDP Phase 2 sites and approves in principle the development of housing and employment allocations from 2017-2026 (now known as Phase 1). Part B safeguards future releases for 2027-2035 (now know as Phase 2).
LR2 - Delivery of Mixed Use Communities	LR2 - Delivery of Mixed Use Communities	N/A - policy carried forward with no change.
D1 - Quality Placemaking by Design	D1 - Architecture and Placemaking	Policy rewritten to ensure a greater focus on high quality design. Reference to landmark / high buildings removed and developed into individual policy (D3)
D2 - Landscape	D6 - Landscape	Policy rewritten. Requires a strong landscape framework and quality landscape design proposals.
D3 - Big Buildings		New Policy confirming the city centre (and its immediate periphery) as the most appropriate location for 'big buildings'. Policy also provides quality expectations and requirements in relation to surrounding context. Does not apply to business / industrial areas.
D4 - Historic Environment	D5 - Built Heritage	Policy rewritten. References to SPP, SHEP, Managing Change and CACAs included. Includes reference to archaeology (previously contained with SG). Reference to impact on gardens/ designed landscapes reduced due to sufficient guidance at national level.
D5 - Our Granite Heritage	D4 - Aberdeen's Granite Heritage	Policy rewritten. Now includes requirement to satisfy SHEP tests for demolition for proposals to demolish a listed building or within a Conservation Area. Requirement to reuse original granite as a building material (as opposed to principal elevations of any replacement building).
NC1 - City Centre Development - Regional Centre	C1 - City Centre Development - Regional centre	N/A - policy carried forward with no change.
NC2 - City Centre Retail Core and Union Street	C2 - City Centre Business Zone and Union Street	Policy rewritten. Reference made to the City Centre Masterplan and Delivery Programme and a greater focus given to the principal retail focus.
NC3 - West End Shops and Cafes		New Policy supporting independent retail and cafes in the West End. Change of use from retail or food to other uses only acceptable through set criteria.
NC4 - Sequential Approach and Impact	RT1 - Sequential Approach and Retail Impact	Tier 4: Commercial Centres added to hierarchy of centres
NC5 - Out of Centre Proposals	RT2 - Out of Centre Proposals	N/A - policy carried forward with no change.
NC6 - Town, District, Neighbourhood and Commercial Centres	RT3 - Town, District and Neighbourhood Centres	Policy rewritten. Retail is the preferred use. Now includes the requirement to prevent conflict with neighbouring areas and the prevention of clustering of a particular use.
NC7 - Local Shop Units	RT4 - Local Shops	Policy rewritten. Now includes the requirement for the proposed use to retain or create a live and attractive frontage.
NC8 - Retail Development Serving New Development Areas	RT5 - Retail Development Serving New Development Areas	N/A - policy carried forward with no change.
NC9 - Beach and Leisure		New Policy permitting development within the Beach and Leisure area provided they cover requirements such as the range and quality of use, scale, mitigation of negative impacts and prevent the increase of car journeys.
I1 - Infrastructure Delivery and Planning Obligations	I1 - Infrastructure Delivery and Developer Contributions	N/A - policy carried forward with no change.

**Main Amemdments from Adopted Aberdeen Local Development 2012 to
Proposed Aberdeen Local Development Plan 2015**

Proposed Plan Ref.	ALDP 2012 Ref.	Amendment
T1 - Land for Transport	T1 - Land for Transport	New projects added include Dyce Railway Station expansion and Aberdeen Harbour expansion. Policy rewritten to focus on the list of transport projects.
T2 - Managing the Transport Impact of Development	T2 - Managing the Transport Impact of Development	Policy rewritten. Now includes an emphasis for sustainable modes of travel and an increase in local services and employment opportunities that are within close proximity to new communities.
T3 - Sustainable and Active Travel	D3 - Sustainable and Active Travel	Greater emphasis placed on links between residential, employment, recreation and other facilities for non-motorised transport users.
T4 - Air Quality	NE10 - Air Quality	References Air Quality SG and explains the content.
T5 - Noise		New Policy. Presumption against noise generating developments and a requirement for a Noise Impact Assessment where exposure to noise is likely to arise from development.
B1 - Business and Industrial Land	BI1 - Business and Industrial Land	N/A - policy carried forward with no change.
B2 - Specialist Employment Areas	BI2 - Specialist Employment Areas	N/A - policy carried forward with no change.
B3 - West End Office Area	BI3 - West End Office Area	Policy rewritten. Now includes criteria regarding size, scale and design of development respecting the character of the area and a requirement to meet criteria in the Historic Environment TAN.
B4 - Aberdeen Airport	BI4 - Aberdeen Airport and Aberdeen Harbour	Policy rewritten. Now includes reference to an airport safeguarding map, airport noise contour map, Perwinnes Radar safeguarding map and the requirements for development that falls within these areas.
B5 - Aberdeen Harbour	BI4 - Aberdeen Airport and Aberdeen Harbour	Policy rewritten. Support given to harbour infrastructure and ancillary uses within the area zoned for Aberdeen Harbour. Regard is given to conflicting use between the harbour and both new and existing developments in its vicinity.
B6 - Pipelines, Major Hazards and Explosives Storage Sites	BI5 - Pipelines and Controls of Major Accident Hazards	Now includes reference to the Council taking advice from the Health and Safety Executive and consulting operators of pipelines where development proposals fall within these zones.
H1 - Residential Areas	H1 - Residential Areas	N/A - policy carried forward with no change.
H2 - Mixed Use Areas	H2 - Mixed Use Areas	N/A - policy carried forward with no change.
H3 - Density	H3 - Density	N/A - policy carried forward with no change.
H4 - Housing Mix	H4 - Housing Mix	Now includes 1 and 2 bedroom units.
H5 - Affordable Housing	H5 - Affordable Housing	N/A - policy carried forward with no change.
H6 - Gypsy and Traveller Caravan Sites	H6 - Gypsy and Traveller Caravan Sites	N/A - policy carried forward with no change.
H7 - Gypsy and Traveller Requirements for New Residential Developments	H7 - Gypsy and Traveller Requirements for New Residential Developments	Now includes the requirements that within Grandhome, Newhills expansion and Loirston the provision must be provided on site, whereas the remaining sites on the list will require a commuted sum.
CF1 - Existing Community Sites and Facilities	CF1 - Existing Community Sites and Facilities	N/A - policy carried forward with no change.
CF2 - New Community Facilities	CF2 - New Community Facilities	N/A - policy carried forward with no change.
NE1 - Green Space Network	NE1 - Green Space Network	Reference now made to ecosystem services and greater emphasis given to the consideration that should be given to identify and consider existing and new areas of green space network within masterplanning new developments.

**Main Amemdments from Adopted Aberdeen Local Development 2012 to
Proposed Aberdeen Local Development Plan 2015**

Proposed Plan Ref.	ALDP 2012 Ref.	Amendment
NE2 - Green Belt	NE2 - Green Belt	Policy rewritten. Now includes criteria for the replacement on a one-for-one basis of existing permanent houses currently in occupation within the Green Belt.
NE3 - Urban Green Space	NE3 - Urban Green Space	N/A - policy carried forward with no change.
NE4 - Open Space Provision in New Development	NE4 - Open Space Provision in New Development	N/A - policy carried forward with no change.
NE5 - Trees and Woodlands	NE5 - Trees and Woodlands	Reference now made to climate change adaptation and mitigation and more detail given to the impact of site preparation to trees. Now includes the opportunity for development sites to provide the planting of trees and hedgerows.
NE6 - Flooding, Drainage and Water Quality	NE6 - Flooding and Drainage	Policy rewritten. DIA requirements now changed to proposals of 5 or more homes or 250m2 floorspace. Reference now given to culverting of watercourses, natural treatments of floodplains and their neutral impact on flood risk.
NE7 - Coastal Planning	NE7 - Coastal Planning	Reference now given to development not being permitted in areas at risk from coastal erosion and flooding and a requirement for Flood Risk Assessments to accompany applications for development in coastal areas.
NE8 - Natural Heritage	NE8 - Natural Heritage	Reference now given to survey requirements if it is suspected that Protected Species are present on a development site and a new paragraph included in reference to carbon-rich soils. Water quality now removed and worked into policy NE6.
NE9 - Access and Informal Recreation	NE9 - Access and Informal Recreation	Now includes reference to maintaining public access and safety during construction.
R1 - Minerals	R1 - Minerals	Now includes reference to safeguarding sites which will sterilise mineral resource or compromise the safe operation of a quarry.
R2 - Degraded and Contaminated Land	R2 - Degraded and Contaminated Land	N/A - policy carried forward with no change.
R3 - New Waste Management Facilities	R3 - New Waste Management Facilities	N/A - policy carried forward with no change.
R4 - Sites for New Waste Management Facilities	R4 - Sites for New Waste Management Facilities	List of sites relevant to the policy now include; Altens East/Doonies, East Tullos and AECC at Bridge of Don.
R5 - Energy from Waste	R5 - Energy from Waste	Regional Waste Facilities paragraph now removed.
R6 - Waste Management Requirements for New Development	R6 - Waste Management Requirements for New Development	Now includes reference to a Site Waste Management Plan where there are potential savings on construction or demolition materials for recycling or reuse.
R7 - Low and Zero Carbon Buildings and Water Efficiency	R7 - Low and Zero Carbon Buildings	Policy rewritten. Figure has changed to 20% below that required by the Scottish building regulations at the time of application. Now includes section on Water Efficiency.
R8 - Renewable and Low Carbon Energy Developments	R8 - Renewable and Low Carbon Energy Developments	N/A - policy carried forward with no change.
CI1 - Digital Infrastructure		New. Promotes access to modern, up-to-date high-speed communications infrastructure.
CI2 - Telecommunications Infrastructure		New. Now included within a policy. References to PAN 62, SHEP and Policy D5 included and sets out criteria in regard to the siting and appearance of telecommunications structures and apparatus.

**Main Amemdments from Adopted Aberdeen Local Development 2012 to
Proposed Aberdeen Local Development Plan 2015**

Proposed Plan Ref.	ALDP 2012 Ref.	Amendment
	D2 - Design and Amenity	Deleted - policy requirements amalgamated / covered within other Plan policies / Supplementary Guidance
	H8 - Housing and Aberdeen Airport	Deleted - policy requirements amalgamated / covered within other Plan policies / Supplementary Guidance



Neutral Citation Number: [2017] EWCA Civ 1314

Case No: C1/2016/4488

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE GARNHAM
[2016] EWHC 2832 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 September 2017

Before:

The Chancellor of the High Court
Lord Justice Lindblom
and
Lord Justice Hickinbottom

Between:

Michael Mansell

Appellant

- and -

Tonbridge and Malling Borough Council

Respondent

- and -

(1) Croudace Portland

Interested

(2) The East Malling Trust

Parties

Ms Annabel Graham Paul (instructed by **Richard Buxton Environmental and Public Law**)
for the **Appellant**

Mr Juan Lopez (instructed by **Tonbridge and Malling Borough Council Legal Services**)
for the **Respondent**

The interested parties did not appear and were not represented

Hearing date: 4 July 2017

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. Should the judge in the court below have quashed a local planning authority’s grant of planning permission for the redevelopment of the site of a large barn and a bungalow to provide four dwellings? That is what we must decide in this appeal. It is contended that the authority misdirected itself in considering a “fallback position” available to the landowner, and also that it misapplied the “presumption in favour of sustainable development” in the National Planning Policy Framework (“the NPPF”) – a question that can now be dealt with in the light of this court’s recent decision in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893.
2. The appellant, Mr Michael Mansell, appeals against the order of Garnham J., dated 10 November 2016, dismissing his claim for judicial review of the planning permission granted on 13 January 2016 by the respondent, Tonbridge and Malling Borough Council, for development proposed by the first interested party, Croudace Portland, on land owned by the second interested party, the East Malling Trust, at Rocks Farm, The Rocks Road, East Malling. The proposal was to demolish the barn and the bungalow on the land and to construct four detached dwellings, with garages and gardens. Mr Mansell lives in a neighbouring property, at 132-136 The Rocks Road – a grade II listed building. He was an objector.
3. It was common ground that the proposal was in conflict with the development plan. Rocks Farm is outside the village of East Malling to its south-east, within the “countryside” as designated in the Tonbridge and Malling Borough Core Strategy. The site of the proposed development extends to about 1.3 hectares. The barn, about 600 square metres in area, had once been used to store apples. The bungalow was lived in by a caretaker. The application for planning permission came before the council’s Area 3 Planning Committee on 7 January 2016. In his reports to committee the council’s planning officer recommended that planning permission be granted, and that recommendation was accepted by the committee. The officer guided the members on the “fallback position” that was said to arise, at least partly, through the “permitted development” rights for changes of use from the use of a building as an agricultural building to its use as a dwelling-house, under Class Q in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).
4. Mr Mansell’s challenge to the planning permission attacked the officer’s approach to the “fallback position” and his assessment of the proposal on its planning merits. Garnham J. dismissed the claim for judicial review on all grounds. Permission to appeal was granted by McCombe L.J. on 21 February 2017.

The issues in the appeal

5. The appeal raises three main issues:
 - (1) whether the council correctly interpreted and lawfully applied the provisions of Class Q in the GPDO (ground 1 in the appellant’s notice);

- (2) whether the council was entitled to accept there was a real prospect of the fallback development being implemented (ground 2); and
- (3) whether the council misunderstood or misapplied the “presumption in favour of sustainable development” (ground 3).

Did the council correctly interpret and lawfully apply the provisions of Class Q?

6. When the council determined the application for planning permission the permitted development rights under Class Q were in these terms, so far is relevant here:

“Q. Permitted development

Development consisting of –

- (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
- (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Q.1 Development not permitted

Development is not permitted by Class Q if –

- ...
- (b) the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 square metres;
 - (c) the cumulative number of separate dwellinghouses developed under Class Q within an established agricultural unit exceeds 3;
- ...
- (g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;
 - (h) the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
-”

The permitted development rights under Class Q are subject to several “Conditions” in paragraph Q.2, none of them controversial here.

7. In section 6 of his main report to committee for its meeting on 7 January 2016 the officer dealt at length with the “Determining Issues”. In discussing those issues he considered the “fallback position” in paragraphs 6.14 to 6.19:

“6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be

converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.

- 6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fallback position in terms of how the site could be developed.
- 6.16 I appreciate that discussion concerning realistic ‘fallback’ positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development.
- 6.17 In this instance a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms. Specifically, it would have to be developed in a contrived and piecemeal fashion in order to conform to the requirements of the permitted development rights, including the need to adhere to the restrictions on the floor space that can be converted using the permitted development rights.
- 6.18 I would also mention that should the applicant wish to convert the entire barn for residential purposes, above the permitted development thresholds, such a scheme (subject to detailed design) would wholly accord with adopted policy. Again, this provides a strong indicator as to how the site could be developed in an alternative way that would still retain the same degree of residential activity as proposed by the current application but in a more contrived manner and with a far more direct physical relationship with the nearest residential properties.
- 6.19 The current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights.”

8. For Mr Mansell, Ms Annabel Graham Paul submitted to us, as she did to the judge, that the officer’s advice in those six paragraphs betrays a misunderstanding of the provisions of Class Q in the GPDO, in particular sub-paragraphs Q.1(b) and Q.1(h). She argued that the restriction to 450 square metres in sub-paragraph Q.1(b) applies to the total floor space of the agricultural building or buildings in question, not to the floor space actually “changing use”. Before the judge, though not in her submissions in this court, Ms Graham Paul sought to bolster that contention with a passage in an inspector’s decision letter

relating to a proposal for development on a site referred to by the judge as “Mannings Farm”. The inspector had observed that “[the] floor space of the existing building ... far exceeds the maximum permitted threshold, of 450 sq m, as set out in [sub-paragraph] Q.1(b)”, and that “the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis”.

9. Garnham J. rejected Ms Graham Paul’s argument. In paragraph 30 of his judgment he said:

“30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is “*the existing building or buildings*”. Paragraph 2 of the Order defines “*building*” as “*any part of a building*”. Accordingly, the paragraph should be read as meaning “*the cumulative floor space of the existing building or any part of the building changing use ...*”. If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use.”

10. The judge found support for that conclusion in several inspectors’ decisions, one of them a decision on proposed development at Bennetts Lane, Binegar in Somerset. In correspondence in that case the Department for Communities and Local Government had pointed to the definition of a “building” in the “Interpretation” provisions in paragraph 2 of the GPDO. Because that definition included “any part of a building”, their view was that “in the case of a large agricultural building, part of it could change use ... and the rest remain in agricultural use” (paragraph 32 of the judgment). However, as was accepted on both sides in this appeal, the court must construe the provisions of the GPDO for itself, applying familiar principles of statutory interpretation.

11. In paragraph 34 of his judgment Garnham J. said this:

“34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provisions should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant's challenge to the Officer's construction of the Class Q provisions in the 2015 Order.”

12. Ms Graham Paul submitted that this interpretation of the relevant provisions would render sub-paragraph Q.1(b) of Class Q redundant, because sub-paragraph Q.1(h) already limits the residential floor space resulting from the change of use under Class Q to a maximum of 450 square metres. The statutory provisions for permitted development rights in the GPDO ought to be interpreted consistently. The interpretation favoured by the judge, submitted Ms Graham Paul, depends on reading into sub-paragraph Q.1(b) the additional words “any part of a building” after the words “the existing building or buildings”, which, she said, is wholly unnecessary. Statutory provisions ought to be construed on the

assumption that the draftsman was intending to add something of substance in each provision. The judge's interpretation offends that principle, said Ms Graham Paul, because it would, in effect, subsume sub-paragraph Q.1(b) into sub-paragraph Q.1(h). Only her interpretation of sub-paragraph Q.1(b) would enable sub-paragraph Q.1(h) to add something of substance to the provisions of Class Q. And in principle, Ms Graham Paul argued, it makes good sense to prevent, without an express grant of planning permission, the partial conversion of large agricultural buildings to accommodate residential use, leaving other parts of the building either in active agricultural use or simply vacant.

13. Ms Graham Paul sought to reinforce these submissions by pointing to other provisions of the GPDO where similar wording is used: Class M, which provides permitted development rights for changes of use of buildings in retail or betting office or pay day loan shop use to Class C3 use, and states in sub-paragraph M.1(c) that development is not permitted if “the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres”; and Class N, which provides permitted development rights for changes of use from specified sui generis uses, including use as an amusement arcade or centre, and use as a casino, to Class C3 use, and states in sub-paragraph N.1(b) that development is not permitted if “the cumulative floor space of the existing building changing use under Class N exceeds 150 square metres”.
14. I cannot accept Ms Graham Paul's argument. I think the judge's understanding of Class Q was correct. The provisions of Class Q relating to the scope of permitted development rights should be given their literal meaning. When this is done, they make perfectly good sense in their statutory context and do not give rise to any duplication or redundancy.
15. The focus here is on the provisions as to development that is “not permitted” under paragraph Q.1, and in particular the provisions of sub-paragraphs Q.1(b) and Q.1(h). Sub-paragraph Q.1(b) establishes the “cumulative floor space of the existing building or buildings” that is “changing use under Class Q ...”. The limit on such “cumulative floor space ...” is 450 square metres. This restriction is stated to be a restriction on the change of use, not on the size of the building or buildings in which the change of use occurs. Sub-paragraph Q.1(b) relates to a single act of development in which the building in question, or part of it, is “changing use”. The floor space limit set by it relates not to the total floor space of the building or buildings concerned. It relates, as one would expect, to the permitted development rights themselves, which apply to the “cumulative” amount of floor space actually “changing use under Class Q”. The use of the word “cumulative” in this context – as elsewhere in the GPDO – is perfectly clear. It connotes, in relevant circumstances, the adding together of separate elements of floor space within a building or buildings, or, again in relevant circumstances, a single element of floor space, which in either case must not exceed 450 square metres. The total floor space of the building or buildings concerned may itself be more than 450 square metres. But the cumulative amount of floor space whose use is permitted to be changed within that total floor space must not exceed 450 square metres.
16. This interpretation of sub-paragraph Q.1(b) avoids arbitrary consequences in the application of the permitted development rights under Class Q. It does not make the availability of those rights for a qualifying “agricultural building” depend on the total floor space of the building itself. It would not, therefore, create a situation in which the permitted development rights under Class Q would be available for a building whose total floor space was 450 square metres, but not for a building with a floor space of 451 square

metres or an area greater than that. If the consequence is that the permitted development rights, when fully used, would result in a building partly in use as a dwelling-house and partly still in agricultural use, that is an outcome contemplated by the GPDO. I see no difficulty in that.

17. Had the draftsman intended to confer permitted development rights under Class Q only to a building or buildings whose total floor space was not more than 450 square metres, the relevant provision would have been framed differently. There would have been no need to use the word “cumulative” or some other such word. The provision would simply have stated, for example, “the total floor space of the existing building or buildings within an established agricultural unit in which the change of use under Class Q is being undertaken does not exceed 450 square metres”. But that is not what sub-paragraph Q.1(b) says, or, in my view, what it means.
18. Nor can I see how an interpretation of sub-paragraph Q.1(b) in which the restriction of 450 square metres applies not to the floor space actually changing use but to the total floor space of the building or buildings in which the change of use is taking place can be reconciled with the definition of “building” in paragraph 2 of the GPDO as including “part of a building”. Unless one disapplies that part of the definition of a building to sub-paragraph Q.1(b), one must read that provision as meaning “the cumulative floor space of the existing building or buildings or part of a building changing use under Class Q ... exceeds 450 square metres” (my emphasis). That understanding of sub-paragraph Q.1(b) would not sit happily with the concept that the restriction of 450 square metres applies not to the floor space changing use but to the total floor space of the building itself.
19. My interpretation of sub-paragraph Q.1(b) does not leave sub-paragraph Q.1(h) redundant. Sub-paragraph Q.1(h) achieves a different purpose. It prevents, for example, a change of use as “permitted development” in an agricultural building of which part is already in Class C3 use, or an aggregation of successive changes of use through separate acts of development, that would result in more than 450 square metres of floor space in a building or buildings being in Class C3 use. Neither of those outcomes would necessarily be prevented by sub-paragraph Q.1(b).
20. Finally, there is nothing in the provisions of Class M and Class N, or in any other provision of the GPDO, to suggest a different understanding of Class Q. The provisions in sub-paragraphs M.1(c) and N.1(b) also contain the word “cumulative” in referring to the floor space “changing use”, not to the total floor space of the “existing building or buildings” in which the change of use is taking place. And in both Class M and Class N the draftsman has also included a provision – respectively in sub-paragraphs M.1(d) and N.1(c) – stating that “the development (together with any previous development under [the relevant class]) would result in more than 150 square metres of floor space in the building having changed use under [the relevant class]”. Although we are not deciding those questions, it seems to me that the same analysis would hold good for those provisions too.
21. In my view, therefore, the officer did not misrepresent the permitted development rights under Class Q in his advice to the committee on the “fallback position”. The provisions of Class Q were correctly interpreted and lawfully applied.

Was the council entitled to accept that there was a real prospect of the fallback development being implemented?

22. Garnham J. accepted that the council was entitled to conclude that there was a “realistic” fallback. In paragraphs 36 and 37 of his judgment he said:

“36. In paragraph 6.15 of the report the Officer concluded that the fall back position was “realistic”. In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another to develop the site. Alternative proposals had been advanced seeking the Council’s likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.

37. It was not a precondition to the Council’s consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site.”

23. The judge accepted the submission of Mr Juan Lopez for the council that the committee did not have to ignore fallback development that included elements for which planning permission would be required and had not yet been granted. He noted that “[the] building could be converted, so as to provide dwelling houses limited in floor space to 450m² by the construction of internal walls without using the whole of the internal space of the barn” (paragraph 40). And he went on to say (in paragraph 41):

“41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant's challenge on ground 1.”

24. Ms Graham Paul criticized the judge’s approach. She said it would enable permitted development rights under the GPDO to be relied on as a fallback even where there was no evidence that the landowner or developer would in fact resort to such development. The judge did not consider whether the council had satisfied itself that there was a “real prospect” of the fallback development being implemented (see the judgment of Sullivan L.J. in *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] J.P.L. 1326, at paragraph 21). The “real prospect”, submitted Ms Graham Paul, must relate to a particular fallback development contemplated by the

landowner or developer, not merely some general concept of development that might be possible on the site. Only a specific fallback makes it possible for a comparison to be made between the planning merits of the development proposed and the fallback development. The relevance of a fallback depends on there being a “finding of actually intended use as opposed to a mere legal or theoretical entitlement” (see the judgment of Mr Christopher Lockhart-Mummery Q.C., sitting as a deputy judge of the High Court, in *R. v Secretary of State for the Environment and Havering London Borough Council, ex parte P.F. Ahern (London) Ltd.* [1998] Env. L.R. 189, at p.196).

25. Ms Graham Paul said there was nothing before the council to show that either the East Malling Trust or Croudace Portland contemplated the site being developed in the way the officer described in his report. On the contrary, the conversion of the barn for residential use – as opposed to its demolition and replacement with new dwellings – seems to have been regarded as impracticable or uneconomic. The East Malling Trust’s planning consultant, Broadlands Planning Ltd., had submitted a “Planning Statement” to the council in December 2013, seeking the council’s advice before the submission of an application for planning permission. In that document two possible schemes for the site were referred to (at paragraph 26). Neither could have been achieved using permitted development rights. One involved the retention of the barn and its conversion to four dwelling-houses, the other a “wholesale redevelopment of the site”, perhaps with the replacement of the bungalow, to create five new dwellings. In a letter to Broadlands Planning Ltd. dated 30 January 2014 the council’s Senior Planning Officer, Ms Holland, said she was “not convinced that the proposal would result in the building being converted, but rather [that] large portions would be removed and a new building created”. And the East Malling Trust’s marketing agent, Smiths Gore, in a letter to potential developers dated 27 February 2014, suggested it was “unlikely that a developer would contemplate the conversion of the Apple Store”. There was, said Ms Graham Paul, no other contemporaneous evidence to lend substance to the fallback scheme to which the officer referred in his report, and no evidence of the council trying to find out what, if anything, was actually contemplated. The evidence did not demonstrate a “real prospect” – as opposed to a merely “theoretical” prospect – of such a development being carried out. The judge should have recognized that the fallback development referred to in the officer’s report was not a material consideration.
26. I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.
27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:
- (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.
 - (2) The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in *Samuel Smith Old Brewery* (see, in particular, paragraphs 17 to 30 of Sullivan L.J.’s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in *R. (on the application of Kverndal) v London Borough of Hounslow Council* [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As

Sullivan L.J. said in his judgment in *Samuel Smith Old Brewery*, in this context a “real” prospect is the antithesis of one that is “merely theoretical” (paragraph 20). The basic principle is that “... for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice” (paragraph 21). Previous decisions at first instance, including *Ahern* and *Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, “... “fall back” cases tend to be very fact-specific” (ibid.). The role of planning judgment is vital. And “[it] is important ... not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge’s response to the facts of the case before the court” (paragraph 22).

- (3) Therefore, when the court is considering whether a decision-maker has properly identified a “real prospect” of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.
28. In this case, in the circumstances as they were when the application for planning permission went before the committee, it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan, in particular policy CP14 of the core strategy. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law.
29. That the East Malling Trust was intent upon achieving the greatest possible value from the redevelopment of the site for housing had by then been made quite plain. The “Planning Statement” of December 2013 had referred to two alternative proposals for the redevelopment of the site (paragraph 26), pointing out that both “[the] redevelopment and replacement of [the] bungalow” and “[the] conversion of the existing storage and packing shed” were “permissible in principle” (paragraph 35). The firm intention of the East Malling Trust to go ahead with a residential development was entirely clear at that stage.
30. In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality – whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer’s report to committee. It is

reinforced by evidence before the court – in the witness statement of Mr Humphrey, the council’s Director of Planning, Housing and Environmental Health, dated 18 March 2016 (in paragraphs 6 to 24), in the witness statement of Mr Wilkinson, the Land and Sales Manager of Croudace Portland, also dated 18 March 2016 (in paragraphs 4 to 7), in the first witness statement of Ms Flanagan, the Property and Commercial Director of the East Malling Trust, dated 17 March 2016 (in paragraphs 4 to 6), and in Ms Flanagan’s second witness statement, dated 17 June 2016 (in paragraphs 2 to 5).

31. As Ms Flanagan says (in paragraph 2 of her second witness statement):

“2. At paragraph 6 of my first witness statement, I state that there was no doubt that the Trust would consider alternatives to the preferred scheme. To further amplify, the Trust (as a charitable body) is tasked with obtaining best value upon the disposal of its assets. A number of alternative uses were considered for the site, including industrial uses. However the Board was aware that a residential scheme of some type would provide the best value for the application land, even were that to include a conversion of the existing agricultural building.”

Ms Flanagan goes on to refer to Smiths Gore’s letter of 27 February 2014 (in paragraphs 4 and 5):

“4. ... This letter ... states that at that time [Smith Gore’s] opinion was that it was unlikely that a scheme of conversion would be contemplated by any developer. However, this letter pre-dated the permitted development rights that subsequently came into effect in April 2014. By the time the planning application had formally been submitted, these permitted development rights were in effect.

5. Had no other scheme proven acceptable in planning terms, and if planning permission had been refused for the development the subject of the planning application, the Trust would have built out a “permitted development” scheme to the fullest extent possible in order to realise the highest value for the land, in order to thereafter seek disposal to a developer.”

32. That evidence is wholly unsurprising. And it confirms the East Malling Trust’s intentions as they were when the council made its decision to grant planning permission in January 2016, by which time the current provisions for “permitted development” under Class Q of the GPDO had come into effect. It states the East Malling Trust’s position as landowner at that stage – as opposed to the view expressed by an officer of the council, and an opinion by a marketing agent in a letter to developers, almost two years before. It is consistent with what was being said on behalf of the East Malling Trust in its dealings with the council from the outset – in effect, that the site was going to be redeveloped for housing even if this had to involve the conversion and change of use of the barn to residential use. It reflects the fiduciary duty of the trustees. And it bears out what the council’s officer said about the “fallback position” in his report to committee.

33. I do not see how it can be said that the officer’s assessment of the “fallback position”, which the committee adopted, offends any relevant principle in the case law – in particular the concept of a “real prospect” as explained by Sullivan L.J. in *Samuel Smith Old*

Brewery. It was, in my view, a faithful application of the principles in the authorities in the particular circumstances of this case. It also demonstrates common sense.

34. The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee. But the officer's advice in paragraphs 6.14 to 6.19 of his report was, I believe, impeccable. He was right to say, in paragraph 6.14, that the "new permitted development rights" – under Class Q in the GPDO – would enable the barn to be converted into three residential units; in the same paragraph, that the building "could be physically adapted in certain ways that would allow for partial residential occupation ..."; and, in paragraph 6.15, that the bungalow "could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building". He was also right to say, therefore, that the site could be developed for "four residential units albeit of a different form and type to that proposed by this application". All of this was factually correct, and represented what the council knew to be so. It did not overstate the position. It went no further than the least that could realistically be achieved by way of a fallback development – through the use of permitted development rights under Class Q and an application for planning permission complying with policy CP14.
35. The officer also guided the committee appropriately in what he said about the realism of the "fallback position". At the end of paragraph 6.15 of his report he said that the fallback development he had described was "a realistic fallback position in terms of how the site could be developed". He was well aware of the need to take into account only a fallback development that was truly "realistic", not merely "theoretical". He came back, in paragraph 6.16, to the question of "realistic 'fallback' positions", again reminding the members that this was what had to be considered. He went on to acknowledge, rightly, that the council had to consider what could be achieved "using permitted development rights for alternative forms of development". The context for this advice was that in his view, as he said in paragraph 6.15, he was dealing with "a realistic fallback position". He went on in paragraph 6.17 to consider what "would" happen if a scheme taking advantage of permitted development rights came forward. And in paragraph 6.18 his advice was that a redevelopment involving the conversion of "the entire barn for residential purposes, above the permitted development thresholds ... would wholly accord with adopted policy". That was a legally sound planning judgment. The same may also be said of the officer's conclusion in paragraph 6.19, where he compared the proposal before the committee with the "more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights".
36. In short, none of the advice given to the council's committee on the "fallback position" can, in the particular circumstances of this case, be criticized. It was, I think, unimpeachable.
37. In my view, therefore, the council was entitled to accept that there was a "real prospect" of the fallback development being implemented, and to give the weight it evidently did to that fallback as a material consideration. In doing so, it made no error of law.

Was the judge right to conclude that the council did not misunderstand or misapply the “presumption in favour of sustainable development” in the NPPF?

38. Paragraph 14 of the NPPF states:

“14. At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or
 - specific policies in [the NPPF] indicate development should be restricted.”

39. In *Barwood v East Staffordshire Borough Council* this court stated its understanding of the policy for the “presumption in favour of sustainable development” in the NPPF, and how that presumption is intended to operate (see paragraphs 34 and 35 of my judgment). In doing so, it approved the relevant parts of the judgment of Holgate J. in *Trustees of the Barker Mill Estates v Secretary of State for Communities and Local Government* [2016] EWHC 3028 (Admin) (in particular paragraphs 126, 131, 136, and 140 to 143). Three simple points emerged (see paragraph 35 of my judgment). The first and second of those three points need not be set out again here. The third, however, is worth repeating – because it bears on the issue we are considering now. I shall emphasize the most important principle for our purposes here:

“ ...

- (3) When the section 38(6) duty is lawfully performed, a development which does not earn the “presumption in favour of sustainable development” – and does not, therefore, have the benefit of the “tilted balance” in its favour – may still merit the grant of planning permission. On the other hand, a development which does have the benefit of the “tilted balance” may still be found unacceptable, and planning permission for it refused This is the territory of planning judgment, where the court will not go except to apply the relevant principles of public law The “presumption in favour of sustainable development” is not irrebuttable. Thus, in a case where a proposal for the development of housing is in conflict with a local plan whose policies for the supply of housing are out of date, the decision-maker is left to judge, in the particular circumstances of the case in hand, how much weight should be given to that conflict. The absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment (see paragraphs 70 to

74 of the judgment in [*Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin)].”

40. The judgments in this court in *Barwood v East Staffordshire Borough Council* entirely supersede the corresponding parts of several judgments at first instance – including, most recently, *Reigate and Banstead Borough Council v Secretary of State for Communities and Local Government* [2017] EWHC 1562 (Admin). In those cases, judges in the Planning Court have offered various interpretations of NPPF policy for the “presumption in favour of sustainable development”, and have explained how, in their view, the presumption should work. There is no need for that to continue. After the decision of the Court of Appeal in *Barwood v East Staffordshire Borough Council*, it is no longer necessary, or appropriate, to cite to this court or to judges in the Planning Court any of the first instance judgments in which the meaning of the presumption has been considered.
41. The Planning Court – and this court too – must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*). The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but – at local level – to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and – on appeal – to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. A particular policy, or even a particular phrase or word in a policy, will sometimes provide planning lawyers with a “doctrinal controversy”. But even when the higher courts disagree as to the meaning of the words in dispute, and even when the policy-maker’s own understanding of the policy has not been accepted, the debate in which lawyers have engaged may turn out to have been in vain – because, when a planning decision has to be made, the effect of the relevant policies, taken together, may be exactly the same whichever construction is right (see paragraph 22 of my judgment in *Barwood v East Staffordshire Borough Council*). That of course may not always be so. One thing, however, is certain, and ought to be stressed. Planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also – however well or badly a policy is expressed – that the court’s interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect – in every case – good sense and fairness in the court’s review of a planning decision, not the hypercritical approach the court is often urged to adopt.
42. The principles on which the court will act when criticism is made of a planning officer’s report to committee are well settled. To summarize the law as it stands:
 - (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of*

Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

- (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.
- (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

43. Was the officer's advice to the members in this case flawed in that way? I do not think so.

44. In paragraph 6.1 of his report the officer said:

“6.1 As Members are aware, the Council in its role as Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. ... The NPPF and the associated [Planning Practice Guidance] are important material considerations.”

He went on to consider the relevant policies of the development plan, in particular policies CP11, CP12, CP13 and CP14 of the core strategy, and then advised the committee, in paragraph 6.6:

“6.6 With the above policy context in mind, it is clear that the proposal relates to new development outside the village confines (on land which is not defined as “previously developed” for the purposes of applying NPPF policy), is not part of a wider plan of farm diversification and is not intended to provide affordable housing as an exceptions site. Consequently, the proposed development falls outside of the requirements of these policies and there is an objection to the principle of the proposed development in the broad policy terms.”

and in paragraph 6.7:

“6.7 It is therefore necessary to establish whether any other material planning considerations exist that outweigh the policy objections to the scheme in these particular circumstances.”

45. In paragraph 6.8 the officer acknowledged, in the light of the relevant guidance in the Planning Practice Guidance, that “the policies contained in ... the NPPF are material considerations and must be taken into account”, and, in paragraph 6.9, that since the core strategy had been adopted in 2007 it was “necessary to establish how consistent the above policies are with the policies contained within the NPPF”. His advice in paragraphs 6.10 to 6.13 of his report was this:

“6.10 With this in mind, it must be noted that paragraph 49 of the NPPF states that applications for new housing development should be considered in the context of the presumption in favour of sustainable development. Paragraph 50 of the NPPF emphasises the importance of providing a wide choice of high quality homes, to widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Paragraph 55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

6.11 These criteria all demonstrate a clear government momentum in favour of sustainable development to create new homes and drive economic development. The proposed development would create four high quality new homes on the very edge of an existing village settlement.

6.12 A further indicator of such emphasis is borne out of the recent changes to the regime of permitted development rights set out by national government by the Town and Country Planning (General Permitted Development) Order 2015. This allows for far more development to take place without the need for planning permission from Local Authorities and generally provides a steer as to government’s thinking on how to boost the country’s economy through the delivery of new homes.

6.13 Such continued emphasis from government is a material consideration that must be balanced against the policy context set out in the TMBCS.”

46. I have already referred to the officer's advice on the "fallback position" in paragraphs 6.14 to 6.19 of his report. In paragraphs 6.20 to 6.42 he considered the planning merits of the proposal and its advantages by comparison with the fallback development, drawing the committee's attention to relevant policies both in the core strategy and in the NPPF. He advised that the design and density of the proposed development were acceptable and beneficial (paragraphs 6.20 to 6.23). In paragraph 6.24 he said:

"6.24 With these considerations in mind, particularly the emphasis contained within the NPPF concerning sustainable development generally, the impetus behind the provision of new homes, the benefits of removing existing structures and the permitted development "fallback" position, it is my view that, on balance, other material considerations can weigh in favour of the grant of planning permission."

47. He concluded that the effects of the development on the settings of listed buildings and the setting of East Malling Conservation Area would not be harmful (paragraphs 6.25 to 6.30). He also found the proposed arrangements for access to the site and for car parking acceptable (paragraphs 6.31 to 6.36). He advised that "... the existing barn could be partially converted and the existing access retained for use by those units which arguably could have a greater impact on amenity in terms of activity, noise and disturbance than the proposed development simply by virtue of the greater degree of proximity to the existing residential properties" (paragraph 6.33). He told the committee that in his view it "would be counterproductive to seek affordable housing contributions as this would merely limit the ability of the Trust to recycle funds to provide wider support for the Trust" (paragraph 6.37). And the loss of Grade 2 agricultural land was "not ... a justifiable reason to refuse planning permission ..." (paragraph 6.39).

48. The final paragraph of the officer's report is paragraph 6.42, where he said this:

"6.42 In conclusion, it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fallback position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."

49. In recording the argument on this issue in the court below, Garnham J. noted Ms Graham Paul's submission that "the presumption in favour of sustainable development set out in paragraph 14 of [the NPPF] was not operative" in this case – because the development plan was in place and up-to-date and the council was able to demonstrate a five-year supply of deliverable housing sites (paragraph 43 of the judgment). Ms Graham Paul had conceded that "sustainability may be capable of being a material consideration in considering a conflict with a development plan". What the officer had done in paragraph 6.10 of his report, said the judge, had been "to invite the committee to note the effect of paragraphs 49, 50 and 55 [of the NPPF]". It was not suggested that those paragraphs of the

NPPF had been misrepresented. Nor was it suggested that the officer had failed to point out that the proposed development “fell outside the local plan”; he had done that in paragraph 6.6 of his report. In those circumstances, said the judge, “it cannot sensibly be argued that the officer misled the committee in any material respect” (paragraph 47). The judge also rejected the submission that paragraphs 49, 50 and 55 of the NPPF were irrelevant. He observed that the NPPF “provides for a presumption in favour of sustainable development which it says should be seen “as a golden thread” running through decision-taking”. He added that “[the] weight to be given to those considerations in any given case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant” (paragraph 48). He rejected the submission that the officer had not justified the departure from the development plan. The officer’s report, he said, “accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved” (paragraph 49).

50. In the submissions they made to us at the hearing, though not in their respective skeleton arguments, both Ms Graham Paul and Mr Lopez recast their arguments in the light of what this court has now said about the “presumption in favour of sustainable development” in *Barwood v East Staffordshire Borough Council*, including the basic point that the presumption is contained solely in paragraph 14 of the NPPF (see paragraph 35 of my judgment in that appeal). They were right to do so.
51. It was common ground before us, as it was in the court below, that the “presumption in favour of sustainable development” did not apply to the proposal. And the council’s officer did not advise the committee that it did. As Ms Graham Paul acknowledged, the only reference to the “presumption in favour of sustainable development” in the officer’s report is in the first sentence of paragraph 6.10. But, she submitted, in view of what the officer said in that paragraph of the report, and also in paragraph 6.42, we should conclude that the committee took the presumption into account as a material consideration, which it ought it not to have done. Ms Graham Paul did not submit that the proposal was given the benefit of the so called “tilted balance”. But she argued that the effect of the officer’s advice was that the “presumption in favour of sustainable development” was one of the “requirements set out within the NPPF ...”, which the officer treated as “an important material consideration” and a significant factor weighing in favour of the proposal in the planning balance.
52. I disagree. In my view the argument fails on a straightforward reading of the officer’s report, in the light of the judgments in this court in *Barwood v East Staffordshire Borough Council*. I do not accept that the officer counted the “presumption in favour of sustainable development” as a material consideration weighing in favour of planning permission being granted.
53. The reference to the “presumption in favour of sustainable development” in paragraph 6.10 of the officer’s report is a quotation of the first sentence of paragraph 49 of the NPPF, not of paragraph 14. The quotation is correct. In the same paragraph of the report the officer also referred to two other passages of policy in the NPPF, namely paragraphs 50 and 55. The policies are correctly summarized. The common factor in those three passages of NPPF policy is not the “presumption in favour of sustainable development”. It is the promotion, in national planning policy, of sustainable housing development. That this is

what the officer had in mind in this part of the report is very clear from what he went on to say in paragraphs 6.11, 6.12 and 6.13, and then in paragraph 6.24.

54. In those paragraphs the officer was not purporting to apply the “presumption in favour of sustainable development” to the proposal. Nor did he advise the committee that the presumption was engaged, or that it was, in itself, a material consideration weighing in favour of the proposal. He referred, in paragraph 6.11, to “[these] criteria” – meaning the matters to which he had referred in paragraph 6.10 – as demonstrating “a clear government momentum in favour of sustainable development to create new homes and drive economic development”; in paragraphs 6.12 and 6.13 respectively, to “such emphasis” and “[such] continued emphasis from government”; and in paragraph 6.24 to “the emphasis contained within the NPPF concerning sustainable development generally ...” (my underlining). The language in those paragraphs is very distinctly not the language one would have expected the officer to have used if he thought he was applying the “presumption in favour of sustainable development”. The intervening and subsequent assessment, culminating in his final conclusion on the planning merits of the proposal in paragraph 6.42, is concerned with its credentials and benefits – and advantages when compared with the fallback – as sustainable development.
55. Paragraph 6.42 of the officer’s report does not, in my view, betray a misunderstanding of NPPF policy for the “presumption in favour of sustainable development”. The advice given to the committee in that paragraph was not inaccurate or misleading. The officer did not undertake the planning balance in terms of the policy for “decision-taking” in paragraph 14 of the NPPF. There can be no suggestion that, contrary to his earlier conclusion and advice in paragraphs 6.6 and 6.7 of his report, he was treating this as a case in which the proposal accorded with the development plan, so that it was to be approved “without delay” under the first limb of the policy for “decision-taking” in paragraph 14. Nor can it be suggested that, contrary to the whole tenor of his assessment of the proposal in paragraphs 6.1 to 6.41, this was a case in which the development plan was “absent” or “silent” or any “relevant policies” of it were “out-of-date”, so that the second limb of the policy for “decision-taking” in paragraph 14 applied.
56. This case is clearly and materially different from *Barwood v East Staffordshire Borough Council* – a case that shows what can go wrong when a decision-maker is misled as to the meaning and effect of government policy for the “presumption in favour of sustainable development”. Here the officer did not commit an error of the kind made by the inspector – and conceded by the Secretary of State – in that case: the mistake of discerning a “presumption in favour of sustainable development” outside paragraph 14 of the NPPF and treating that wider presumption as a material consideration weighing in favour of the proposal (see paragraphs 43 to 48 of my judgment in *Barwood v East Staffordshire Borough Council*). The officer did not say, as the inspector did in *Barwood v East Staffordshire Borough Council*, that “where a proposal is contrary to the development plan [the “presumption in favour of sustainable development”] is a material consideration that should be taken into account” (paragraph 12 of the decision letter in that case). Unlike the inspector in that case (in paragraphs 37 to 41 of his decision letter), he did not bring the “presumption in favour of sustainable development” into the balancing exercise as a material consideration (see paragraphs 26 and 29 of my judgment). And, in my opinion, it cannot realistically be suggested that the members would have thought they were being invited to apply that presumption in government policy, or to give it weight as a material consideration, in their assessment of the proposal.

57. The “presumption in favour of sustainable development” did not, in fact, feature as a material consideration to which the officer gave any positive weight when undertaking the planning balance. The exercise he conducted in paragraph 6.42 of his report was an entirely conventional and lawful balance of other material considerations against the identified conflict with the development plan, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires. It was, in fact, a classic example of that provision in practice. This is not to say that in his assessment of the proposal he had to refrain from considering the extent to which it complied with relevant NPPF policies – in particular, in the specific respects to which he referred, the sustainability of the proposed development in the light of NPPF policy, as well as its compliance with relevant policies of the development plan. That was a perfectly legitimate, and necessary, part of the planning assessment in this case. Had the officer left it out, he would have been in error, because he would then have been failing to have regard to material considerations. But he did not make that mistake. He assessed the proposal comprehensively on its planning merits, exercising his planning judgment on the relevant planning issues. He took into account the sustainability of the proposed development in the light of NPPF policy, but without giving it the added impetus of the “presumption in favour of sustainable development”. I cannot fault the advice he gave.
58. Finally on this issue, I do not accept the suggestion made by Ms Graham Paul in reply that the council’s response to Mr Mansell’s solicitors’ pre-application protocol letter, in its solicitors’ letter dated 22 February 2016, can be read as conceding the error for which Ms Graham Paul contended. In fact, it squarely denied that error. Having referred to the quotation of the first sentence of paragraph 49 of the NPPF in paragraph 6.10 of the officer’s report, it acknowledged that the proposal was a “departure from the development plan” and that the development plan was not “absent” or “silent” nor were relevant policies “out-of-date”. It then said that neither the officer nor the committee had treated the “presumption in favour of sustainable development” under paragraph 14 of the NPPF as “operative” in this case. It acknowledged, therefore, that neither of the limbs of the policy for “decision-taking” in paragraph 14 of the NPPF could have applied here. And it said that the officer’s report “does not begin to suggest otherwise”. I agree.
59. It follows that this ground of appeal must also fail.

Conclusion

60. For the reasons I have give, I would dismiss this appeal.

Lord Justice Hickinbottom

61. I agree with both judgments. Without diminishing my concurrence with anything my Lords have said, I would wish expressly to endorse the observations of Lindblom L.J. in paragraphs 39-40 to the effect that, in future, reference to pre-*Barwood v East Staffordshire Borough Council* authorities on the meaning and operation of the presumption in paragraph 14 of the NPPF should be avoided; and in paragraph 41, supported by the further comments of the Chancellor, on the respective roles of planning decision-makers and the courts in planning cases.

The Chancellor of the High Court

62. I too agree with Lord Justice Lindblom's judgment, but would add a few words from a more general perspective. In the course of the argument, one could have been forgiven for thinking that the contention that the presumption in favour of sustainable development in the NPPF had been misapplied in the planning officer's report turned on a minute legalistic dissection of that report. It cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the Planning Committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.
63. Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer's report. An appeal will only succeed, as Lindblom L.J. has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer's advice on which they relied.
64. It is also appropriate to reiterate what Lindblom L.J. said at paragraph 35 of the *East Staffordshire* case to the effect that planning decision-makers have to exercise planning judgment as much when the presumption in favour of sustainable development is applicable as they do when it is not. The presumption may be rebutted when it is applicable, and planning permission may be granted where it is not. In each case, the decision-makers must use their judgment to decide where the planning balance lies based on material considerations. It is not for the court to second guess that planning judgment once it is exercised, unless as I have said it is based on a distinct and material defect in the report.
65. I agree that this appeal should be dismissed.



Strategic Place Planning

Report of Handling

Site Address:	4 Kirk Crescent North, Aberdeen, AB15 9RP,
Application Description:	Erection of replacement dwellinghouse
Application Ref:	201610/DPP
Application Type:	Detailed Planning Permission
Application Date:	18 December 2020
Applicant:	Mr Adam Smith
Ward:	Lower Deeside
Community Council:	Cults, Bieldside and Milltimber
Case Officer:	Jamie Leadbeater

RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The application site comprises the residential curtilage of a 1½ storey detached dwellinghouse with set-back single storey detached garage on the south-eastern side of Kirk Crescent North in Cults.

The application property has a hipped slate tiled roof with a chimney on either side and a box dormer on the rear. Two bay windows exist on the front elevation and a conservatory projects from the rear. Externally, the property is finished in granite blockwork. A garden area exists to the front and rear and driveway runs down the side of the house to the garage set behind the rear elevation of the dwellinghouse.

In terms of the wider context, Kirk Crescent North is lined on both sides by detached properties of varying designs, size and appearances which include features such as hipped and pitched roofs, box dormer windows, bay windows, and chimneys as well as a variety of different external finishes such as granite blockwork, light coloured renders and different coloured roofs.

Relevant Planning History

Application Number	Proposal	Decision Date
191852/DPP	Erection of single storey extension to side and erection of 1½ storey extension to rear of dwellinghouse, as well as formation of box dormer window on front elevation	08.04.2020 Status: Approved

APPLICATION DESCRIPTION

Description of Proposal

Detailed Planning Permission is sought for the demolition of the existing dwellinghouse and erection of a replacement three bedroom 1½ storey detached dwellinghouse with associated car parking and landscaping.

The dwellinghouse would measure 13m wide x 10.5m in depth x 3.25m to eaves (maximum) x 6.8m to roof ridge. It would feature two ground floor bay windows on the front elevation, two small box dormers on the front slope and one large dormer and flue pipe on the rear. Large full height glazed windows and doors would be positioned on the rear elevation.

Externally, the roof would be finished in grey slate tiles. The front elevation would be finished in coursed natural granite block work with some white dash render to side elevations and rear. Windows to be made from timber frames with aluminium coverings.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QLJ2D8BZFHB00> .

- Design Statement

CONSULTATIONS

ACC - Roads Development Management Team – No concerns. The proposed site layout for access and parking is considered acceptable.

ACC - Waste & Recycling – ACC intend to provide waste facilities. Wheelie bins should be presented on the kerbside for collection and removed immediately afterwards.

ACC - Environmental Health – No response received.

Cults, Bieldside and Milltimber Community Council – No response received.

Scottish Water – No objection. Unable to confirm water supply capacity from their Invercarnie Water Treatment works so the applicant is advised to engage in the Pre-Development Enquiry process. There is currently capacity at the Nigg PFI waste water treatment plant to allow a connection to the public sewer to discharge foul water but due to sewer capacity issues surface water should not be drained into the public combined sewer.

REPRESENTATIONS

None

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, 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.

Aberdeen Local Development Plan (ALDP) 2017

- Policy H1: Residential Areas
- Policy CI1: Digital Infrastructure
- Policy D1: Quality Placemaking by Design
- Policy NE6: Flooding, Drainage and Water Quality
- Policy R6: Waste Management Requirements for New Developments
- Policy T2: Managing the Transport Impact of Development
- Policy T3: Sustainable and Active Travel
- Policy R7: Low and Zero Carbon Buildings, and water efficiency

Supplementary Guidance (SG)

- Redevelopment and Sub-Division of Residential Curtilages
- Resources for New Development
- Transport and Accessibility

Proposed Aberdeen Local Development Plan (2020)

The Proposed Aberdeen Local Development Plan (Proposed ALDP) was approved at the Council meeting of 2 March 2020. The Proposed ALDP constitutes the Council's settled view as to what the final content of the next adopted ALDP should be, and is now a material consideration in the determination of planning applications. The Aberdeen Local Development Plan 2017 will continue to be the primary document against which applications are considered. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether –

- these matters have been subject to public consultation through the Main Issues Report; and,
- the level of objection raised in relation these matters as part of the Main Issues Report; and,
- the relevance of these matters to the application under consideration.

The foregoing can only be assessed on a case by case basis.

EVALUATION**Principle of Development**

The site falls within a "Residential Area" designation on the ALDP Proposals Map to which Policy H1 in the Aberdeen Local Development Plan (ALDP) applies. Policy H1 supports new residential development within such areas providing it satisfies the following criteria:

- 1) Does not constitute "overdevelopment";
- 2) Does not have an unacceptable impact on the character and amenity of the surrounding area;
- 3) Does not result in the loss of valuable and valued open space; and,
- 4) Complies with supplementary guidance (the Sub-Division and Redevelopment of Residential Curtilages).

The site falls within an established residential curtilage and therefore the proposal would not result in the loss of valuable or valued public open space. The other requirements of Policy H1 shall be addressed in the paragraphs to follow.

Layout, Siting and Design

The proposed replacement building would be set upon the principal building line along the southern side of the street, which is a strong characteristic of the Kirk Crescent North streetscape and therefore this is welcomed. The greatest proportion of the front curtilage would be devoted to a garden area, which is also a strong feature of the streetscape and therefore this is considered acceptable. The proposed widened site vehicular access would have no adverse bearing on the

character of the street given there is such a variance of these features on the streetscape already. Although the proposed depth of the dwellinghouse would be larger than the existing, it would be smaller in depth to existing house plus the rear extension approved under previous application 191852/DPP which is material as this application was determined in the same ALDP period as the currently applicable ALDP policies. Therefore, the proposed replacement dwellinghouse would result in more amenity land being set aside in the rear curtilage of the site, specifically a rear garden with a depth of 20m – far in excess of the minimum requirements set out in the SG on the redevelopment and subdivision of residential curtilages. Taking into account the above considerations, the proposed layout is considered reasonable within the site's context and would not result in 'overdevelopment' of the site.

In comparison to the existing dwellinghouse, the proposed replacement would appear greater in mass as it would have straightened gables and a slightly higher roof ridge. However, given the variance in roof formations and house types on Kirk Crescent North this is still considered acceptable, especially given the submitted street elevation indicates the ridge would sit at a height between the ridge of both adjacent dwellinghouses. The proposed incorporations of bay and window dormer features on the front elevation would also not look out of place on the street and are considered acceptable. Although the dormer in the rear elevation is large and contains a notable amount of solid panelling, it is considered a reasonable solution for the proposed replacement dwellinghouse, particularly because it would not have any significant prominence from public vistas in the surrounding area. Given the prevalence of white renders and some use of granite to finish buildings on the street, the proposed finishing materials are considered and therefore would have an acceptable impact on the character and appearance of the street.

In terms of the impact on the amenity of neighbouring properties the primary considerations are privacy, daylighting and sunlighting/overshadowing.

With regards to privacy, no windows would be orientated towards adjacent neighbours boundaries and over 20m separation distance would be retained between the proposed rear elevation windows and garden areas pertaining to 2 Cults Avenue and 3 Kirk Crescent South to the south. As such, it is not considered the proposal would have any undue adverse impacts on neighbours' privacy.

Given the proposed replacement dwellinghouse would have a greater depth of approximately 3m than the existing dwellinghouse, it is considered it would have an impact on daylighting and sunlighting to 2 Kirk Crescent North's windows on the rear elevation and the northern quarter of that neighbour's rear garden area during morning hours of the day. However, during afternoon and evening hours when the garden area and rooms in the rear of the neighbouring dwellinghouse would likely be in greater use, the proposed replacement dwellinghouse would have no daylighting or sunlighting impact when the sun moves round to the west. Subsequently, this amenity impact on 2 Kirk Crescent North would be acceptable. In respect of the impact on the other adjacent neighbouring property to the east (6 Kirk Crescent North), any daylight and sunlight/overshadowing impact would be experienced later in the day, given the proposed dwellinghouse would lie to the west. Whilst it is acknowledged the proposed dwellinghouse would be sited closer to the neighbour to the east than the existing, any daylighting impact on the house would be experienced within the neighbouring adjoining garage which is a non-habitable space and therefore this impact would be acceptable. It is accepted that the increase proximity and depth of the proposed dwellinghouse would cause greater overshadowing within the neighbour's rear garden space in the later parts of the day but this would likely stretch only as far as the western quarter of the neighbour's garden area. Therefore, the impact would not be so significant that it would significantly alter the level of sunlight cast over the rear garden space of 6 Kirk Crescent North and unduly harm the neighbour's enjoyment of the space.

Taking the above considerations into account, it is considered the proposal would have an

acceptable impact on the character and amenity of the surrounding area and therefore the proposal would comply with Policy H1 in the ALDP. Given this is the case, it is considered the proposed replacement house would be appropriately designed to suit its context and therefore would also render the proposal compliant with Policy D1 in the ALDP.

Access and Parking

The Council's Roads Development Management team have reviewed the proposals and they are satisfied that the proposal would provide a safe vehicular access as well as a sufficient level of car parking to safeguard road safety on Kirk Crescent North. As such, the proposal is considered acceptable in respect of Policy T2 in the ALDP. Given the site lies within an established residential area then the site would benefit from existing public amenities primarily on North Deeside Road in Cults, which are a reasonable distance away and therefore this would encourage transport to and from the site by sustainable means such as walking or cycling. Bus services run along North Deeside Road, providing a sustainable means of transport into the city centre also. Taking these considerations into account, the proposal would comply with Policy T3 in the ALDP. Notwithstanding, it is recommended that condition be applied requiring full implementation of the site access and parking spaces prior to occupation to ensure the dwellinghouse is served by appropriate infrastructure. The formation of the altered dropped kerb would need to be undertaken by the Council and cost covered by the applicant. This can be added as an 'informative' should the application be approved.

Drainage

Scottish Water has been consulted on the application and they have confirmed that sufficient capacity exists within the local water treatment works at Nigg to accommodate discharge of foul water from the site into the public sewer. However, they have indicated that the surface water would not be allowed to be discharged into the combined public sewer to mitigate future flooding events in the city, a different arrangement to what the current house utilises. As such, it is incumbent on the applicant/developer to demonstrate that surface water could be dealt with using a SuDS arrangement specifically designed for the site and its ground conditions. No details have currently been provided but it is considered that there is a strong prospect that a suitable SuDS arrangement could be implemented within the site to prevent flooding to neighbouring properties. Subsequently, it is recommended that if planning permission is granted, the SuDS details and appropriate accompanying certification is proposed by an appropriately qualified person is secured by way of condition. The condition would require the details to be approved by the Planning Authority in advance of works commencing and full implementation prior to occupation of the dwellinghouse. This would ensure the proposal complies with the relevant requirements of Policy NE6 in the ALDP.

Digital Connectivity, Energy Efficiency and Water Efficiency

No information has been supplied with the application to demonstrate compliance with policies R7 and C11 in the ALDP to establish the development energy and water efficiency merits as well as its likely level of digital connectivity, although given the site's suburban setting it is likely that the relevant requirements of policy C11 policies could be satisfied. Subsequently, in granting planning permission, it is considered reasonable and competent to control compliance with these policies through use of appropriately worded planning conditions.

Proposed Aberdeen Local Development Plan

In relation to this particular application, the policies in the Proposed Aberdeen Local Development Plan 2020 (ALDP) substantively reiterate those in the adopted Local Development Plan and the proposal is acceptable in terms of both Plans for the reasons previously given.

Conclusion

Overall, the principle of development is considered acceptable given the site falls within an established residential area and the layout and design of the proposed replacement house with its

associated outbuilding and boundary treatments are considered to be sympathetic to the character of the Kirk Crescent North without unduly jeopardising the level of residential amenity currently afforded to neighbours. Furthermore, given the presence of an existing recently lived in house on the site in a suburban area, there is a very realistic prospect the development would be served by all appropriate infrastructure. As such, subject to the proposed conditions being satisfied, the proposal would comply with all relevant policy requirements in the Aberdeen Local Development Plan 2017. In the absence of any other material considerations dictating otherwise, the application is recommended for approval.

RECOMMENDATION

Approve Conditionally

REASON FOR RECOMMENDATION

The principle of development is considered acceptable as the proposal would comply with the requirements of Policy H1 (Residential Areas) in the Aberdeen Local Development Plan 2017. Furthermore, the layout and design of the proposed replacement is considered sympathetic to its context without adversely impacting on the amenity of neighbouring residents and therefore is considered compliant with Policy D1 (Quality Placemaking by Design) and its attendant supplementary guidance The Sub-Division and Redevelopment of Residential Curtilages in the Aberdeen Local Development Plan 2017. Furthermore, it is considered the proposed replacement dwellinghouse could be appropriately serviced in all respects. As such, in the absence of any other overriding material considerations, the proposal is considered acceptable and therefore the application is recommended for approval.

CONDITIONS

1. No development shall take place until full SuDS (Sustainable urban Drainage System) details have been submitted to and approved by the Planning Authority in writing to demonstrate that the hereby approved dwellinghouse can be served by appropriate infrastructure for the disposal of surface water. Once approved, all SuDS infrastructure shall be implemented in full and be operational prior to occupation of the hereby approved dwellinghouse.

Reason: To ensure compliance with Policy NE6 (Flooding, Drainage and Water Quality) in the Aberdeen Local Development Plan 2017.

2. Prior to commencement of development, the applicant/developer shall provide full details of the energy efficiency rating of the dwellinghouse hereby approved for approval in writing by the Planning Authority. Once approved, the construction of the dwelling house shall be carried out to a standard which ensures the approved energy efficiency levels can be achieved.

Reason: To ensure compliance with Policy R7 (Low and Zero Carbon Buildings, and water efficiency) in the Aberdeen Local Development Plan 2017 and its associated Supplementary Guidance.

3. Prior to commencement of development, the applicant/developer shall submit details to the Planning Authority demonstrating that the hereby approved replacement dwellinghouse could be served by up-to-date high-speed digital communications infrastructure.

Reason: To ensure compliance with Policy CI1 (Digital Infrastructure) in the Aberdeen Local Development Plan 2017.

4. The hereby approved dwellinghouse shall not be occupied until the proposed vehicular access,

driveway and car parking areas are implemented in full in accordance with drawing 08 Rev B.

Reason: To ensure the dwellinghouse is served by appropriate car parking infrastructure from the outset to minimise dependency on the street and thus to minimise road safety risk on Kirk Crescent North.

ADVISORY NOTES FOR APPLICANT

1. The driveway must be internally drained with no surface water draining onto the public road. No loose material, such as stone chippings, should be used to surface the first 2m of the driveway, adjacent to the footway, in order to prevent material being carried onto the road or footway. The vehicular footway crossing required for access must be constructed by Aberdeen City Council. The applicant is responsible for all costs involved and should contact footwaycrossings@aberdeencity.gov.uk or telephone 01224 241500, at least 6 weeks prior to any works starting on site to arrange for an estimate for the cost of works.
2. It is recommended that the applicant/developer contacts Scottish Water directly before making a connection to the public water supply or sewer. They can be contacted directly on 0800 3890379 or via email DeveloperOperations@scottishwater.co.uk .

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