

## LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 9 October 2023. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor McRae, Chairperson; and Councillors McRae, Farquhar, Macdonald and Radley.

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

### **36 ALBYN PLACE - ERECTION OF BALCONY WITH EXTERNAL STAIRS AND FORMATION OF DOOR FROM AN EXISTING WINDOW OPENING TO REAR - PLANNING REF 230652**

1. The Local Review Body (LRB) of Aberdeen City Council met on this day to review the decision taken by an appointed officer under the Council's Scheme of Delegation for the non-determination of application for the erection of balcony with external stairs and formation of door from an existing window opening to rear at 36 Albyn Place, Aberdeen.

Councillor McRae as Chair for the meeting, gave a brief outline of the business to be undertaken, advising that the LRB would be addressed by the Assistant Clerk, Mr Mark Masson with regards to the procedure to be followed and thereafter, by Ms Lucy Greene who would be acting as the Planning Adviser to the Body in the following case under consideration this day.

The Chairperson stated that although the Planning Adviser was employed by the planning authority, she had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. He emphasised that the officer would not be asked to express any view on the proposed application.

The Local Review Body was then addressed by Mr Masson, Assistant Clerk in regard to the procedure to be followed, at which time reference was made to the procedure note circulated with the papers calling the meeting and to more general aspects relating to the procedure.

In relation to the application, the LRB had before it (1) a delegated report by the Appointed Officer, Aberdeen City Council; (2) an application dated 26 May 2023; (3) links to the plans showing the proposal and planning policies referred to in the delegated report; and (4) the Notice of Review submitted by the applicant.

Ms Greene then described the site and outlined the appellant's proposal which sought planning permission for the erection of balcony with external stairs and formation of door from an existing window opening to rear.

Ms Greene indicated that the appointed officer's reasons for refusal outlined in the report of handling was as follows:-

- Door opening generally compliant, no justification for loss and re-use of granite, or for loss of original window – however, principle acceptable in terms of HES and LDP guidance/policy on Windows and Doors.

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- the excessive scale, inappropriate design and limited detail on material would have an adverse effect on the built environment, contrary to NPF4 Policy 14 (Design, Quality and Place) & Policy D1 (Quality Placemaking) of the LDP. Proposed balcony would have a significant negative impact on integrity, character and special architectural interest of the listed building and its overall setting and oversized scale and the height at which the balcony would be fixed, it would be clearly visible from outwith the application site - neither preserving nor enhancing the character of the conservation area.
- External fixtures Guidance (HES) requires consideration of scale and method of fixing; balcony is of inappropriate scale and materials and fixing method unknown; and
- Contrary to:-
  - NPF4 Policy 7 (Historic Assets and Places);
  - LDP Policy D6 (Historic Environment);
  - Historic Environment Policy for Scotland;
  - Historic Environment Scotland's Managing Change in the Historic Environment Guidance - External Fixtures; and
  - LDP Policy VC6 (West End Office Area) - requires all development proposals to respect the special historic and architectural character of the West End.

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

- Detailed history of building and residential use in past;
- Cat C listed and was in Conservation Area (CA);
- Detailed ownership of car parks to rear;
- Noted that no.35 was a vacant office building and no.37 had a large extension to rear;
- Building would revert to family home, and original balcony fell into disrepair and was removed;
- Described history of applications at the site, contacts with Planning Authority and amendments made (scale, design, shape and material);
- Stated applicant's commitment to property and desire for residential use;
- There were no objections from neighbours or consultees;
- Distance to rear lane would hide balcony from view;
- Balcony would help maintenance;
- Focus of report was balcony, other aspects were acceptable;
- No issue with principle of balcony as there was one originally;
- Question was whether balcony complied with policy;
- Statement of Special Interest – referred to details on front – front unaffected;
- CA Appraisal noted exemplars, which did not include no.36. Further noted changes in back gardens, with many large extensions behind high walls;
- In terms of impact on CA, natural screening was relevant, and 2m fence approved in garden. Fleeting views only. No impact on CA, also taking into account the rear extension next door;
- Balcony would not affect special features;

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- Proposal would comply with Policy D8 (may mean D6: Historic Environment);
- Design: not possible to replicate original balcony, due to Building Regulations (proportions, spiral stair, material and handrails) – complied with D1;
- Justification for doorway provided;
- Proposal informed by understanding of significance and would allow future enjoyment;
- External fixtures – designed to reflect original and matches width. Accorded with guidance: secondary elevations can often accommodate new fixtures without significant impact; and
- Non-ferrous – steel was necessary and would be hot galvanised.

Ms Greene advised that the applicant had expressed the view that a site visit should be undertaken.

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

In terms of relevant policy considerations, Ms Greene referred to National Planning Framework 4 and the Aberdeen Local Development Plan 2023.

Ms Greene also made reference to:-

- APG – Repair and replacement of Windows and Doors;
- Historic Environment Policy for Scotland (HEPS);
- Historic Environment Scotland’s Managing Change in the Historic Environment Guidance (MCHE): Windows, Doors, External Fixtures and Setting; and
- Albyn Place and Rubislaw Conservation Area Character Appraisal

Ms Greene responded to various questions from members which included whether there had been consultation with Historic Environment Scotland and the scaling and extension of the balcony.

**Members each advised in turn and by majority, agreed to overturn the appointed officer’s earlier decision to refuse the planning permission and to therefore approve the application conditionally.**

The Chairperson and Councillors Farquhar and Radley agreed to overturn the appointed officer’s earlier decision to refuse the planning permission.

Councillor Macdonald upheld the appointed officer’s earlier decision to refuse the planning permission.

In coming to their decision, the Local Review Body had regard to the provisions of the development plan as required by Sections 25 and 37 of the Town and Country Planning

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(Scotland) Act 1997 (as amended) and other material considerations in so far as these were pertinent to the determination of the application.

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

The Review Body took into account the location of the balcony on a rear secondary elevation of the building, that the proposed structure is of similar width to the original balcony, the implications of technical and safety requirements of the materials and design of the structure, relative proximity of the nearest public street, Albyn Lane, as well as the surrounding context including large extensions on neighbouring historic and listed buildings. It is considered that the proposal would be acceptable in its impact on the character and setting of the listed building, and would preserve the character of the Albyn Place Conservation Area. It would therefore comply with policies VC6: West End Area, Policy D1 (Quality Placemaking), Policy D6 (Historic Environment) policies 7 (Historic Assets and Places) and 14 (Design, Quality and Place) in National Planning Framework 4 (NPF4).

In terms of the works proposed to enlarge an opening to create a doorway, the proposal would also comply with policies D7 (Our Granite Heritage) and D8 (Windows and Doors).

**Conditions**

This permission is granted subject to the following conditions.

**(01) Duration of Permission**

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

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

**(02) Fixings**

That no development shall take place unless there has been submitted to, and approved in writing by, the planning authority, details of any fixing of the balcony structure into the building. The details should include the location, material and method of fixing into the building. Any fixings shall be installed only in accordance with the details as so agreed.

Reason: In the interests of protecting the fabric of the listed building.

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**LAND TO REAR OF 6 CRAIGDEN - CHANGE OF USE FROM PUBLIC OPEN SPACE TO PRIVATE GATED COMMUNAL GARDEN AND ERECTION OF ASSOCIATED ENCLOSURE FENCE WITH GATE (RETROSPECTIVE) - PLANNING REF 221307**

2. The LRB then considered the second request for a review to evaluate the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the application for the change of use from public open space to private gated communal garden and erection of associated enclosure fence with gate (retrospective) at land to rear of 6 Craighden, Aberdeen.

The Chairperson advised that Ms Lucy Greene would again be acting as the Planning Adviser to the Body in the following case under consideration this day and reiterated that although the Planning Adviser was employed by the planning authority, she had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. She emphasised that the officer would not be asked to express any view on the proposed application.

In relation to the application, the LRB had before it (1) a delegated report by the Appointed Officer, Aberdeen City Council; (2) an application dated 31 October 2022; (3) the decision notice dated 2 June 2023; (4) links to the plans showing the proposal and planning policies referred to in the delegated report; (5) the Notice of Review submitted by the applicant's agent; and (6) six letters of representation.

Ms Greene then described the site and outlined the appellant's proposal which sought planning permission for the change of use from public open space to private gated communal garden and erection of associated enclosure fence with gate (retrospective).

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

- Loss of public open space, required as part of earlier planning permission;
- Affected the character and amenity of surrounding area;
- Prevention of access for recreation and general access rights and right of way;
- Therefore reduced access and recreation value of Green Space Network;
- Contrary to aims to enhance access in Local Development Plan and National Planning Framework 4 (NPF4) - health and wellbeing;
- Precedent setting – result would be gradual erosion of open space;
- Contrary to design policies seeking inclusive layout and passive surveillance;
- Contrary to policies on design, green infrastructure, Green Space Network, Residential Areas;
- Access rights related to Land Reform Act – not an exception;
- Many locals would not have access to space; and
- Crime was not a material consideration.

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

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- Notes that area was accessible to all residents with a combination lock on gate;
- Encampment on land – by owner – and with 3 caravans etc;
- Permission granted for works in association with allotments on land to north, access road created and steel fencing erected;
- Back garden of no6 was exposed to bridge and experienced littering;
- Trees planted previously were vandalised and people congregated under bridge;
- Tree removal by previous owner of land;
- Fencing and maintaining area had transformed it;
- Objectors did not stay in the area;
- Open Space Audit identified need for better quality and accessible space – requirements should be flexible. Hazlehead was well provided for;
- Age of Open Space Strategy and Audit, query reason for refusal;
- Appeal on allotments found loss of g/s minor, with enough remaining;
- Site could be considered forestry – use would not constitute development; it remains o/s;
- Held in separate ownership to house – not part of garden – reference to title deeds;
- Sufficient amenity space continued to be provided as area was accessible;
- Fence matches other fences and was not detrimental to amenity or character;
- Allowing trees to establish would improve amenity;
- Area was not valued open space, it was brambly and rubbish filled;
- Private, gated communal garden was a form of open space and there was no loss;
- Proposal would allow delivery of nature restoration and biodiversity in support of Policy 20 and NE2 on green infrastructure;
- No core paths were impacted;
- Precedent – each case decided on merits, this area had its own issues and benefits from the proposal;
- Although fence required permission due to road, road was 20m above site with no relationship or impact on visibility;
- Passive surveillance was not referred to in Policy 14 of NPF4 – not reason for refusal;
- Area was not Council owned; cameras would not stop vandalism; and
- Applicant would accept temporary approval, or condition for fence to be removed when trees mature.

Ms Greene advised that Police Scotland were consulted, however, no response was received. She indicated that there were two objections and four letters of support. No comments were submitted by Woodend Community Council.

Ms Greene advised that the applicant had expressed the view that the review should proceed on basis of a site visit and not solely on the basis of the information submitted, this was because it was considered appropriate to view the fence in context and see the benefits.

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

**The Chairperson indicated that he had enough information before him and the review under consideration should be determined without any further procedure, however Councillors Macdonald, Radley and Farquhar each indicated that a site visit would be beneficial, therefore the LRB agreed by majority that a site visit be held prior to determining the review.**

The review under consideration was therefore adjourned for a site visit to be arranged.

### **636 KING STREET - CHANGE OF USE OF HOUSE IN MULTIPLE OCCUPATION (HMO) TO SERVICED APARTMENTS (RETROSPECTIVE) - PLANNING REF 230918**

3. The LRB then considered the second request for a review to evaluate the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the application for the change of use of House in Multiple Occupation (HMO) to serviced apartments (retrospective) at 636 King Street, Aberdeen.

The Chairperson again stated that although the Planning Adviser was employed by the planning authority, she had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. He emphasised that the officer would not be asked to express any view on the proposed application.

In relation to the application, the LRB had before it (1) a delegated report by the Appointed Officer, Aberdeen City Council; (2) an application dated 27 July 2023; (3) the Decision Notice dated 5 September 2023; (4) links to the plans showing the proposal and planning policies referred to in the delegated report; (5) the Notice of Review submitted by the applicant; and (6) consultee comments from the Council's Roads and Waste Development Management Teams.

Ms Greene then described the site and outlined the appellant's proposal which sought planning permission for the change of use of House in Multiple Occupation (HMO) to serviced apartments (retrospective).

Ms Greene indicated that the appointed officer's reasons for refusal outlined in the report of handling was as follows:-

- Provided tourist accommodation – LDP Policy VC2 (Tourism and Culture) & NPF4 Policy 30 (Tourism);
- Benefit to local economy, balanced against loss of residential – currently considered no significant harm through loss of housing;
- No harm to amenity of area;
- Adequate amenity for guests for short term stays;

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- Accessible by public transport and active travel – Policy 13 (Sustainable Transport) of NPF4 and LDP Policies T2 (Sustainable Transport) and T3 (Parking);
- Refuse storage acceptable - Policy 12 (Zero Waste) of NPF4 and LDP Policy R5 (Waste Management); and
- Small scale in terms of climate mitigation, climate change, nature crisis and biodiversity no impact NPF4 Policies 1 (Tackling the Climate and Nature Crises) and 2 (Climate Mitigation and Adaptation), Policy 3 (Biodiversity).

Ms Greene highlighted two of the three conditions contained within the Report of Handling, as follows:-

### (2) Maximum Length of Customer Stays

That not any one or more of the serviced apartments hereby approved shall be occupied for a period in excess of 90 days in any one calendar year by any one family, individual or group of individuals.

Reason: In order to ensure that the apartments are not used as permanent, mainstream housing, due to the deficit in amenity that would be required for such accommodation.

### (3) Time Limit for Serviced Apartment Use

The hereby approved use of the property as serviced apartment accommodation shall expire 5 years following the date of the grant of permission as stated on this notice, unless a further planning permission has been granted for continued use of the property as serviced apartment accommodation in the meantime. Should no further planning permission be granted then the property shall revert to residential use as a single House in Multiple Occupation after the aforementioned 5-year period.

Reason: In order to allow the local housing need and demand situation and the local economic benefits derived from the use of the property as serviced apartments to be reassessed in 5 years' time, to ensure that the loss of the property as residential accommodation would remain compliant with Policy 30 of NPF4.

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

- Appeal was based on two conditions (2 and 3);
- Condition 2 – Max length of stay of 90 days in year for any person unduly restrictive, with returning guests staying short periods totalling 180 days – visit for lecturing, construction workers, healthcare workers including locums. Established relationship with clients, and would need to refuse bookings;
- Condition 3 – Temporary permission for 5 years – plan to use serviced apartments on long-term basis.



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Ms Greene advised that the applicant had expressed the view that no further procedure was required.

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

In terms of relevant policy considerations, Ms Greene referred to National Planning Framework 4 and the Aberdeen Local Development Plan 2023.

Ms Greene also made reference to:-

- the Scottish Government's publication on 'Short Term Lets: Business and regulatory impact assessment' from November 2021;
- Circular 1/2023 (Short-Term Lets and Planning); and
- Supplementary Guidance: Serviced Apartments.

Ms Greene responded to a question relating to the terminology regarding 'continuous occupancy' and how the maximum length of stay of 90 days would be monitored.

**Members each advised in turn and unanimously agreed to uphold the appointed officer's earlier decision. Planning permission was therefore approved subject to the same conditions, which were noted below.**

In coming to their decision, the Local Review Body had regard to the provisions of the development plan as required by Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (as amended) and other material considerations in so far as these were pertinent to the determination of the application.

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

The use of the property as serviced apartments increases the offering of short-stay business and leisure tourist accommodation in the city, which is generally in accordance with the aims of Policy VC2 (Tourism and Culture) of the Aberdeen Local Development Plan 2023 (ALDP), albeit the application site is not located within the city centre. The property's use as serviced apartments would likely provide some local economic benefits, potentially to the tourism and hospitality sectors, without causing any significant harm to local housing need through the loss of residential accommodation, in accordance with Policy 30 (Tourism) of National Planning Framework 4 (NPF4). The proposed use would also not conflict with, or cause any nuisance to, the residential amenity of the area, in accordance with Policy 30 of NPF4 and Policy H1 (Residential Areas) of the ALDP.

It is considered that there would be sufficient amenity for the occupants of the proposed apartments given the short-term, temporary nature of the accommodation being provided, which would be for tourists and/or business travellers, rather than

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permanent residents. The application site is located in an accessible position immediately adjacent to a bus stop which is served by bus services to the city centre and beyond. The site is also within walking, wheeling and cycling distance of the University of Aberdeen campus and various facilities and amenities. Although no car parking spaces would be provided within the property curtilage, given the scale of the development, its location and accessibility to public transport, it is considered that the site would likely be predominantly accessed by sustainable and active modes of travel, in accordance with Policy 13 (Sustainable Transport) of NPF4 and Policies T2 (Sustainable Transport) and T3 (Parking) of the ALDP. There is sufficient space within the curtilage of the property for the storage of any waste generated by the new use, and for the suitable collection of that waste, in accordance with Policy 12 (Zero Waste) of NPF4 and Policy R5 (Waste Management Requirements for New Development) of the ALDP.

The proposed development, comprising the change of use of an existing property, with no associated external alterations, is sufficiently small-scale such that it would not make any material difference to the global climate and nature crises nor to climate mitigation and adaptation, nor are there any opportunities to minimise greenhouse gas emissions given the nature of the proposals, therefore the proposed development is compliant with Policies 1 (Tackling the Climate and Nature Crises) and 2 (Climate Mitigation and Adaptation) of NPF4. There is no opportunity to enhance on-site biodiversity, therefore the proposals are acceptable, despite some minor tension with Policy 3 (Biodiversity) of NPF4.

(1) Duration of Permission

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

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

(2) Maximum Length of Customer Stays

That not any one or more of the serviced apartments hereby approved shall be occupied for a period in excess of 90 days in any one calendar year by any one family, individual or group of individuals.

Reason: In order to ensure that the apartments are not used as permanent, mainstream housing, due to the deficit in amenity that would be required for such accommodation.

(3) Time Limit for Service Apartment Use

The hereby approved use of the property as serviced apartment accommodation shall expire 5 years following the date of the grant of permission as stated on this notice, unless a further planning permission has been granted for continued use of the property as serviced apartment accommodation in the meantime. Should no

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further planning permission be granted then the property shall revert to residential use as a single House in Multiple Occupation after the aforementioned 5-year period.

Reason: In order to allow the local housing need and demand situation and the local economic benefits derived from the use of the property as serviced apartments to be reassessed in 5 years' time, to ensure that the loss of the property as residential accommodation would remain compliant with Policy 30 of NPF4.

- **COUNCILLOR CIARAN MCRAE, Chairperson**