

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 13 October 2023. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor , Convener; Councillor , Vice-Convener; and Councillors McRae, Farquhar, Macdonald and Radley.

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

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

1. With reference to article 2 of the minute of their previous meeting of 9 October 2023, the Local Review Body (LRB) of Aberdeen City Council met on this day to review the decision taken by an appointed officer 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.

Councillor McRae made reference to the site visit undertaken earlier today and 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 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;

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- 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:-

- 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;

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- 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.

In terms of relevant policy considerations, Ms Greene referred to National Planning Framework 4 (NPF4) and the Aberdeen Local Development Plan 2023 (ALDP).

Ms Greene responded to questions from members, confirming that the case officer determined this planning application using the policies from the ALDP 2017, given that the new ALDP 2023 had not gone through Council approval process by then, however the ALDP 2023 and supplementary guidance would be used for determining the application by the Local Review Body.

Ms Greene also responded to questions relating to (1) the length of time for a possible temporary approval of the application to allow the trees to mature; and (2) access for maintaining the viaduct.

Members each advised in turn and by majority agreed to uphold the appointed officer's earlier decision to refuse the application.

Councillor Farquhar was minded to approve the application on a temporary basis with a condition that the fence be removed when the trees mature.

The Chairperson and Councillors Macdonald and Radley agreed to uphold the appointed officer's earlier decision to refuse the application.

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

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

The change of use of the application site to a private gated communal garden has resulted in the loss of a valued area of open space to the wider public, which was required as part of the open space provision requirements in the planning permission for the residential development of the wider area, and thus adversely affects the character and amenity of those living and working in the surrounding area. The prevention of access to the wider public compromises the recreational opportunities

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of the space and prevents the general access rights of the land and right of way across the land and thus the recreation and access value to the public from this space has been lost. The proposal reduces the access and recreation value of the Green Space Network. The loss of the publicly accessible open space is not in the public interest and is contrary to the aims of both National Planning Framework 4 and the Aberdeen Local Development Plan 2023 in terms of enhancing access to high quality open space on the basis that it improves health and wellbeing.

The proposal could give rise to the setting of a precedent that would make it difficult to resist similar proposals in the future which cumulatively could result in the gradual erosion of and fragmentation of publicly accessible open space, which would not be in the public interest. Such an approach would be significantly detrimental to the character and amenity of those living and working in the surrounding area and would be contrary to Policy D1 – Quality Placemaking in the Aberdeen Local Development Plan 2023 and the Qualities of Successful Places referred to in Policy 14 (Design, Quality and Place) of National Planning Framework 4, which seeks inclusive layouts and development and passive surveillance.

The proposal would therefore conflict with the principles of Policies 14 (Design, Quality and Place) and 20 (Blue and Green Infrastructure) of National Planning Framework 4; Policies H1 (Residential Areas), NE2 (Green and Blue Infrastructure) and D1 (Quality Placemaking) of the Aberdeen Local Development Plan 2023; the aims of the Green Space Network and Open Space Supplementary Guidance.

- **COUNCILLOR CIARAN MCRAE, Chairperson**