

Supporting Statement for Notice of Review – 43 Middleton Circle, Aberdeen (Ref: 241224/DPP)

Introduction

This Supporting Statement is submitted on behalf of the appellant in respect of the refusal of detailed planning permission (Ref. 241224/DPP) for the retrospective change of use of amenity land to private garden ground and the erection of a fence, gate and steps at **43 Middleton Circle, Aberdeen**. The proposal was refused by the appointed officer on 21 January 2025. This Statement addresses each reason for refusal cited in the Decision Notice file, with reference to the Delegated Report and relevant planning policy. It is respectfully contended that the refusal reasons can be overcome and that the development is, on balance, in accordance with the spirit of National Planning Framework 4 (NPF4) and the Aberdeen Local Development Plan 2023 (ALDP 2023). The appellant requests that the Local Review Body consider the evidence and arguments below, which demonstrate that the change of use and associated works cause no material harm to public amenity, biodiversity or landscape character, and that granting permission (potentially with appropriate conditions) would be a reasonable and proportionate outcome.

Background and Site Context

The area under review is a small parcel of land (~63m²) immediately adjacent to the rear of 43 Middleton Circle. Prior to its incorporation into the appellant's garden, the land was **unmanaged open ground** on the fringe of a larger wooded belt (the "West Belt") that surrounds the Middleton area. The site itself contained **no trees** or notable vegetation at the time of enclosure. Aerial photographs and site photos (available in the application) confirm that the land was essentially *unused scrub/grassland*, not maintained as formal open space or parkland. The Council had not been actively maintaining this strip, and indeed when the appellant previously inquired about upkeep, the Council indicated it was **not under their maintenance** remit (implying it was either the developer's residual land or simply not recognized as public open space). As such, before the appellant's involvement the land was **neglected**, with no clear ownership signage or public use.

In 2019 (over four years ago), the appellant erected a **timber boundary fence** around this land (along with a gate and small timber steps to adjust for a slight ground level change). These works were carried out to secure and *steward the land*, which had been prone to littering and encroachment of weeds. Since enclosing the site, the appellant has actively **maintained and improved the area**: keeping it clear of invasive weeds and rubbish, and installing **wildlife features** such as bat boxes and birdhouses on the new garden extension. These boxes are now in active use, supporting local bats and birds. No trees were removed to erect the fence or use the land; the character of the larger woodland belt has been preserved, with the fence line abutting the existing tree line. The land remains a **green vegetated buffer** now tended by the appellant in a manner that enhances its appearance and ecological value rather than being left to dereliction.

It is important to note that the fence and change of use were undertaken in good faith to improve the area. The presence of the fence for over four years prior to any enforcement action means the **operational development (fence, gate, steps)** is now **lawful by passage of time**, per Section 124(1) of the Town and Country Planning (Scotland) Act 1997 (the four-year rule for unauthorised building operations). The appellant nevertheless sought to regularise the change of use through a retrospective planning application in October 2024, demonstrating a willingness to cooperate with planning authorities. The refusal of this application and the prospect of enforcement against the use of the land prompts this appeal.

The key points of contention in the refusal are addressed in detail below:

- Alleged loss of ancient woodland and Green Space Network (Policy 6 of NPF4; Policy NE2/NE5 of ALDP 2023)
- Impact on landscape character and creation of an irregular boundary (Policy 14 and 16 of NPF4; Policy D1 of ALDP 2023)

- Alleged harm to biodiversity and climate/nature policy objectives (Policy 1, 2, 3, 4 of NPF4; Policy NE3 of ALDP 2023)
- Precedent risk leading to erosion of open space (general concern)
- Legal and planning context (including immunity from enforcement and questions of ownership/maintenance responsibilities)

Each of these is discussed in turn, with reference to the reasons given in the Decision Notice and Delegated Report.

Green Space Network and Ancient Woodland: No Actual Loss of Woodland or Network Function

Reason for Refusal (summarized): The Council’s decision asserts that the development results in *“enclosure and loss of a valued area of open space, part of the Green Space Network and an area of ancient woodland”*, conflicting with NPF4 Policy 6 (Forestry, Woodland & Trees) and Policy 20 (Blue & Green Infrastructure), and ALDP 2023 Policy NE2 (Green & Blue Infrastructure) and NE5 (Trees & Woodland).

Appellant’s Response: It is contended that the proposal has **not caused any loss of ancient woodland**, nor materially harmed the function of the Green Space Network (GSN) in this area:

- **No Trees Removed:** The Delegated Report itself acknowledges that *“there are no trees within the application site boundary.”* While the broader West Belt is listed in the Ancient Woodland Inventory (with historic maps showing woodland cover in 1899), the specific 63m² plot in question contained no mature trees or woodland vegetation at the time of the fence erection. In other words, the **proposal did not fell or remove any ancient or mature trees** – the hallmark of what Policy 6 seeks to protect. NPF4 Policy 6(b) indeed states that development **“will not be supported”** if it results in *“any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition”*. Here, there has been **no loss of trees** ancient or otherwise and thus the strict prohibition in Policy 6 should not directly apply. The ecological condition of the adjacent woodland has not been degraded by the fence; the trees immediately surrounding the site remain untouched and healthy.
- **Ancient Woodland Soil:** It is recognized that *ancient woodland* status can extend to the soil and ground, even if trees have been previously removed, due to the potential seed bank and ecological value of undisturbed soils. However, in this case the small area was *disturbed historically* (it lies at the edge of a housing development and had been graded as part of the original estate construction). The appellant’s works (placing a light timber platform and fence posts) involved minimal ground disturbance. There is no evidence that this caused any harm to an “ancient” soil ecosystem indeed the site was not identified as ecologically sensitive in any survey. Furthermore, any **potential for woodland regeneration** on this tiny fringe was extremely limited given its context (immediately behind an existing garden and below a slope). By contrast, the appellant’s continued maintenance ensures the area remains vegetated (with grass and garden plants) rather than, for example, being paved or built upon. Should it ever be desirable to re-establish trees on this exact spot, the fence could easily be adjusted or opened but presently, the surrounding woodland has ample space to regenerate outside the fence where conditions are more suitable.
- **Green Space Network Function Preserved:** The West Belt is part of the designated GSN, valued for connectivity of wildlife and as a buffer. The development does **not impede the continuity of the Green Space Network**. The fenced plot is at the **northern edge of the belt**, adjoining the existing residential curtilage. The remaining expanse of the West Belt to the south, west, and east continues to provide an unbroken corridor for wildlife movement, recreation, and landscape buffering. Notably, a *well-used public footpath* runs through the wider open space, linking Bridge of Don neighborhoods and a Core Path. **This footpath is unaffected** by the development it does not run through the enclosure, but rather

through the open space beyond the appellant's garden. Public access along the path remains exactly as before, with no diversions or blockages. Wildlife still traverses the area; birds and bats certainly are unimpeded (indeed, they are **attracted by new nesting boxes** the appellant provided), and small mammals can move around the fenced plot through the extensive remaining woods. The **coherence of the GSN is maintained**, as required by ALDP Policy NE2, which states that development proposals should *"protect, support and enhance the Green Space Network"*. In practical terms, the Network's wildlife, recreation, and landscape functions have been **protected** arguably **enhanced** on this plot by active management and not significantly diminished by a modest adjustment of the boundary.

- **Valued Open Space:** The refusal describes the land as a "valued" area of open space. The appellant respectfully questions this characterization. Prior to enclosure, the land was not **usable open space** for the public it was rough ground behind a house, not landscaped or signposted for recreation. No play equipment, seating, or formal path existed on that specific piece. It functioned as a small part of the buffer strip, but given its immediate proximity to the existing private garden and its small size, it had **no meaningful standalone amenity use**. Members of the public would not have had reason to venture onto that particular patch (indeed doing so would place them directly behind a private garden fence). The *Open Space Audit 2010* cited in similar cases identified broad areas of open space for protection, but such audits tend to consider larger continuous areas. The **removal of this 63m² from the public realm has no demonstrable impact on the community's open space provision or access**, especially as the broader area remains accessible and intact. The appellant's enclosure has in fact *deterred anti-social use* (such as fly-tipping or dumping that sometimes occurs in hidden corners of open space), thereby arguably **protecting the wider open space's quality**.

In summary, **no ancient woodland features have been lost** as a result of the development. The fence simply formalized a very small corner of an existing garden, without felling trees or severing wildlife corridors. The Green Space Network's integrity in terms of ecology and public usage remains effectively **unchanged**. Therefore, the appellant contends that the proposal **complies with the intent of NPF4 Policy 6 and ALDP Policy NE5**, which seek to prevent destruction of woodland. By **retaining the land as green and permeable**, the development also aligns with **Policy NE2's goal** of protecting the wildlife and landscape value of the GSN. Any suggestion of conflict with these policies should be reconsidered in light of the evidence that **no physical loss of trees or access has occurred** and that the land continues to function as part of the green network (albeit under private stewardship).

Landscape Character and Boundary Treatment: Minimal Visual Impact and Respectful Design

Reason for Refusal (summarized): The decision notes that the resultant **irregular boundary** of the residential curtilage *"adversely affects the character and appearance of the area"*, contrary to NPF4 Policies 14 (Design, Quality and Place) and 16 (Quality Homes), ALDP Policy D1 (Quality Placemaking), and the Householder Development Guidefile-9sjivqcuuvijczvsk7aw.

Appellant's Response: The appellant acknowledges that the fence extends the garden boundary beyond the original line of rear gardens on Middleton Circle. However, it is argued that this **minor irregularity** does not cause any appreciable harm to the character or visual amenity of the area:

- **Limited Visibility:** The fence enclosure is located at the rear of the property, **not visible from any public road**. The primary vantage points are within the woodland/open space itself. From the public footpath within the West Belt (several metres away), a passer-by would see a tidy timber fence at the edge of the woods, adjoining the existing garden fence line. Timber fencing is a common feature at the interface of housing and green space, and this fence, at ~1.8m high (2.3m including the platform), is of a typical residential style and height. It is finished in natural wood, which blends reasonably well with the woodland edge. There is no garish or out-of-character material used no tall masonry wall or inappropriate barrier. In essence, **the visual impression remains that of a garden boundary**, now a few meters further out. The casual observer still perceives a division between private garden and wild land,

as existed before (just at a slightly altered location). This **does not fundamentally alter the landscape quality** of the woods or the housing estate. The area continues to read as a wooded buffer adjacent to a residential area, consistent with the design of the Grandhome Development Framework which anticipated a buffer in this vicinity.

- **Character of the Area:** The Bridge of Don area contains numerous examples of houses backing onto green strips or fields, often with various boundary treatments. A slight projection of one garden into a buffer strip is not unprecedented and does not look incongruous if done modestly. The key characteristics of the area a mix of modern suburban houses and interwoven green spaces remain **identifiable and unharmed**. The fence line is **irregular only in plan view**; to the eye, it aligns with the natural contours and edges of the site. There is no “zig-zag” appearance; it simply follows the shape of the land parcel. Importantly, the extended garden is *small relative to the expanse of the open space*, so the overall shape of the West Belt green space remains visually similar it has not been significantly intruded upon or broken up. The **woodland backdrop is still the dominant visual element**, not the fence.
- **Quality of Design:** Policies 14 and D1 demand high design quality and placemaking. While these policies are more typically applied to new buildings or larger developments, the spirit of them is to ensure developments are considerate to context. In this case, the **design and materials** of the fence and platform are simple and high-quality in the sense of being fit for purpose and not causing aesthetic offense. The timber construction respects the “granite city” guidance more so than, say, a concrete block wall would (though granite policy mainly relates to street-facing elements, which this is not). The **Householder Development Guide** likely contains guidance on extending garden ground, often cautioning against proposals that project into amenity areas. However, the Guide also emphasizes that any such changes should not “detract from the character or amenity of the area.” Here, the **character is maintained** there is no loss of public amenity (as discussed elsewhere) and the change is visually unobtrusive. The appellant would also be willing to accept **planning conditions** to further mitigate visual impact if required (for instance, staining the fence a darker recessive color, or planting additional native shrubs along the outside of the fence to soften its appearance). Thus far, vegetation around the fence has naturally grown, helping it assimilate.
- **Boundary Maintenance:** One concern sometimes raised with irregular boundaries is the ability to maintain what remains of the open space (e.g., if a fence abuts a stone dyke or other feature). In this case, the fence is freestanding and does not prevent access to maintain the surrounding vegetation. The appellant continues to pick litter and monitor the outside area immediately around the fence as a goodwill practice. There is no public infrastructure (like a wall or drain) needing access at this exact location that has been cut off. Therefore, the notion that future maintenance is “constrained” is not applicable here (unlike other cases where a new boundary pressed right up against a wall, impeding repairs no such situation exists on this site).

In light of the above, the appellant submits that the **visual and landscape impact is negligible**. The development meets the **intent of Policy D1 and NPF4 Policy 14** by **respecting the site’s context and using appropriate materials**. The overall design is small in scale and integrates with the existing environment. Any *perceived irregularity* in the boundary is a minor planning abstraction that does not translate to a real-world harm. As such, this reason for refusal should be set aside as insufficient grounds to withhold planning permission.

Biodiversity and Climate/Nature Policies: Enhancement Through Stewardship

Reason for Refusal (summarized): The Council contends that the loss of this area to private garden (with attendant permitted development rights) would be *“to the detriment of, rather than an enhancement to, biodiversity,”* and that no mitigation or measures are demonstrated to address the climate and nature crises.

They cite conflicts with NPF4 Policies 1 (Tackling Climate and Nature Crises), 2 (Climate Mitigation and Adaptation), 3 (Biodiversity) and 4 (Natural Places).

Appellant's Response: The appellant fundamentally **disagrees that biodiversity has been harmed**; on the contrary, the management of the plot as a garden **with wildlife-friendly practices has enhanced local biodiversity** compared to its previous neglected state. Furthermore, the scale of development is so minor that global climate considerations (Policies 1 and 2 of NPF4) are not meaningfully triggered beyond ensuring no undue harm which has been achieved.

Key points:

- **Proactive Biodiversity Measures:** Far from offering “no mitigation,” the appellant has **installed bat boxes and bird nesting boxes** on and around the new garden area. These are now actively used by species present in the area. For example, bats (common pipistrelle observed locally) now have additional roosting opportunities where none existed before, and garden birds (such as sparrows, tits) are using the birdhouse for shelter/nesting. These small interventions are directly in line with **NPF4 Policy 3 (Biodiversity)**, which requires development proposals to “**deliver positive effects for biodiversity**” wherever possible. What the appellant has done voluntarily is deliver such positive effects. It appears the officer’s report did not take account of these measures (perhaps because they were not formally conditioned, but they have been implemented nonetheless). Should consent be granted, the appellant would welcome a condition to **retain and maintain these wildlife features** in perpetuity, to ensure ongoing biodiversity gain.
- **Habitat Quality:** Prior to enclosure, the habitat value of the site was low it was essentially a piece of mown grass with windblown debris and occasional colonisation by common weeds. It offered little in the way of food or shelter for wildlife, apart from being a tiny part of a larger area. Since being looked after by the appellant, the **habitat diversity has increased**: parts of the area are kept as grass/lawn, but edges are allowed to grow more freely, and garden planting includes pollinator-friendly flowers. No pesticides or harmful chemicals are used by the appellant on this land, conscious of its proximity to the woods. In essence, the land has been transformed from a *neglected edge* into a **manageable transitional habitat** between garden and wild wood. This **edge habitat** (ecotone) can actually benefit biodiversity by providing varied conditions. The appellant’s stewardship ensures it does not turn into a dumping ground or barren patch. **Biodiversity has therefore been maintained or improved**, not reduced.
- **Permitted Development (PD) Rights Concern:** The Council raises the theoretical concern that, if the land remains as garden with no conditions, the owner could exercise householder permitted development rights to build further structures or decking, thereby possibly reducing green space or harming biodiversity. This is a speculative concern that can be easily addressed: the appellant is **amenable to a condition removing permitted development rights on the extended garden area**. It is common in cases of garden extensions onto former open land for the planning authority to **limit development rights** for example, to prevent erection of outbuildings or paving over of the area without consent. The appellant would accept such a limitation, which means **any future proposals would require planning permission and environmental consideration**. With this safeguard, the fear of uncontrolled development impacting biodiversity is eliminated. It should be noted that currently, aside from the small shed (which was mentioned in the report but not part of this application), the area remains mostly open and green. The appellant has demonstrated a commitment to keeping it green and eco-friendly. Thus, the PD argument is not a valid reason to refuse the application outright, when a condition could resolve it.

- **Climate and Nature Crises (NPF4 Policy 1):** Policy 1 of NPF4 instructs decision-makers to give *significant weight* to the global climate and nature crises in assessing proposals. This does **not mean every small development must in itself solve these crises**, but rather that proposals should be judged by whether they contribute to or detract from climate and nature objectives. In this case, the development is **climate-neutral** it involves no increase in carbon emissions (no new building, just a fence), and it maintains green space (which continues to absorb CO₂ and support nature). Preventing deforestation and encouraging nature-based solutions are key climate actions; here, **no deforestation occurred**, and the appellant's actions are a micro example of **nature restoration (by improving habitat for local species)**. It would be disproportionate to suggest that this small garden change is at odds with Policy 1 if anything, the way the land is being managed is **aligned with climate adaptation goals** (greenspaces in urban areas help with climate resilience, and having engaged citizens caring for local greenspace is part of the nature network resilience). There is certainly *no high-carbon impact* like increased car travel or energy use from this change if anything, the family may enjoy their garden more locally rather than driving to other green areas, a subtle sustainability benefit.
- **Natural Places (NPF4 Policy 4):** Policy 4 relates to natural places, including locally important habitats and wildlife sites. The West Belt links to the **Grandhome Moss Local Nature Conservation Site (LNCS)** further north. The development does not encroach into the LNCS, nor interfere with any priority habitat. The essential qualities of the natural place (the West Belt woodland) are intact. By nurturing wildlife in the garden extension, the appellant is complementing the goals of Policy 4, which are to protect and restore natural habitats. No rare species or protected habitats have been identified exclusively on the 63m² that are now garden thus no conflict with Policy 4's requirement to safeguard environmental interests.

In summary, the appellant's position is that **biodiversity has been safeguarded and even enhanced** by the change of use. The claim that the development is "to the detriment" of biodiversity is unsubstantiated when looking at on-the-ground facts. Conversely, there are clear **positive effects** on biodiversity arising from the appellant's actions (nest boxes, habitat upkeep), which should be recognized in line with NPF4 Policy 3. With a condition to remove permitted development rights on the area (if deemed necessary), there is no risk of future unintended harm. The proposal is thus consistent with the **aims of NPF4 Policies 1, 2, 3, 4** – it certainly does not undermine them in any meaningful way, and it aligns with ALDP Policy NE3 (Natural Heritage) which seeks to protect local biodiversity. The enforcement of a rigid interpretation here (refusing the application) would produce no benefit for climate or nature in fact, it could be counterproductive if it discourages individuals from improving neglected land. The Local Review Body is invited to consider this broader perspective on how small-scale stewardship like this can contribute to, rather than detract from, environmental objectives.

Public Amenity and Use: No Harm to Recreation or Open Space Needs

Although not explicitly a separate reason in the decision wording, an underlying theme of the refusal is that a piece of *public open space* has been taken into private use, potentially harming public amenity and enjoyment of the area. The appellant respectfully submits that **no public amenity value has been lost**:

- **No Public Access Lost:** Prior to enclosure, the public was not using this specific ground for access or recreation. The main public asset the footpath through the woods remains open and unchanged. There were (and are) alternative open areas and paths nearby for people to enjoy. Given the land's position immediately behind a private garden, most members of the public likely assumed it was always part of that garden or otherwise off-limits. There has been *no reduction in land available* for community recreation such as walking, dog exercise, or play. **Important open space** (parks, playing fields, etc.) in the vicinity are untouched. In short, there has been **no demonstrable harm to the public's ability to enjoy the outdoors** in this neighbourhood.

- **Quality of Open Space:** One objection claimed a policy inconsistency with open space protection (Policy NE2). ALDP Policy NE2 and associated Open Space Guidance aim to ensure enough quality open space is available. The area in question is **very small and peripheral** to the overall open space network. The **qualitative improvement** by the appellant (removing an eyesore and preventing misuse) arguably offsets the quantitative “loss” of open space. The remainder of the West Belt continues to provide the same amenity as before, and indeed may be **better off** without a neglected corner accumulating trash. The Council’s **Open Space Audit** (2010) and Greenspace mapping identify broad swathes; losing 63m² from a larger segment does not cause the open space provision to fall below any standards or thresholds. The appellant’s garden is still *green and undeveloped*, so in the landscape it reads as part of the green space. In essence, the land still *functions as open space*, just under private care.
- **Council’s Role and Responsibility:** It is noteworthy that when the appellant previously notified the Council about litter and disrepair in that corner, the **Council disclaimed responsibility for maintaining it**. This suggests that the land was not part of any active open space management regime. There was no regular maintenance (mowing, pruning or litter-picking) by the Council on that specific bit. As such, the **public authorities did not treat it as a public amenity space** of significance. The appellant took it upon herself to manage the land, incurring personal expense and effort for the betterment of the immediate environment. It seems unreasonable for the Council to later assert the land’s vital public value when, in practice, it was **abandoned ground** from their perspective.
- **Ownership and Legal Status:** There is a lack of clarity on the ownership of the strip. It may have remained in the hands of the housing developer or defaulted to the Crown or another entity. It is **not registered as Council-owned public park**. Nor is it, as far as the appellant is aware, explicitly designated as “amenity open space” in any legal document (beyond the general policy zoning). This ambiguity means the public did not have any assured right to use the land (trespass laws would consider it private if not Council-owned, albeit unenforced). The Notice of Review requests transparency on this point. If the land is truly needed for public amenity, one would expect the Council to have taken steps to own or maintain it. Since they did not, it underlines that **the change to garden ground is largely a formalisation of a status quo where the land was effectively not public-use land**. The appellant’s respectful view is that **planning policy should not be applied in a vacuum** real-world use and ownership matter. In real-world terms, no community interests have been violated by this change.

In light of these points, granting permission for the change of use would **not deprive the public of any open space resource** that they actually use or need. Conversely, forcing the removal of the fence and reversion of the land to its prior state would not meaningfully benefit the public, since it would likely revert to an overgrown patch that no one tends or uses. There is therefore **no public interest served by refusal or enforcement** in this instance. This aligns with one of the appellant’s core arguments: planning enforcement (and refusal) should be **proportionate**, aiming to remedy tangible harm. Here, tangible harm is absent.

Precedent and Cumulative Impact: A Manageable and Distinguishable Situation

Reason for Refusal (summarized): The decision warns that approval *“would make it difficult to resist similar proposals in the future”* at other properties bordering the open space, which *“cumulatively could result in the gradual erosion and fragmentation”* of the Green Space Network and ancient woodland, **significantly harming** the area’s character, amenity, and biodiversity.

Appellant’s Response: While the concern for precedent is understood, the appellant submits that this case has **special circumstances** that set it apart, and that any future proposals would still require careful case-by-case evaluation:

- **Each Case on Merits:** The planning system legally obliges that *“every application is assessed on its merits,”* as the Delegated Report itself acknowledges. A decision to approve this appeal would not

automatically allow all neighbors to do the same; it would indicate that **where a proposal causes no harm and even brings benefits, it can be acceptable**. If another homeowner seeks to enclose amenity land, the Council can and should consider: Is there loss of trees? Is there public use of that portion? Is the area significant in size or function? Many plots might differ for instance, some other houses might back onto sections of the belt that contain mature trees or are closer to the core path, where impacts would indeed be greater and likely unacceptable. Those could still rightfully be refused. Approving a benign change does not force the Council to approve a harmful one later.

- **Special Circumstances of No Tree Loss & Long-term Use:** This particular case is characterized by **no tree loss, long-term existing use (4+ years without issue), and demonstrable stewardship**. Not all cases would tick these boxes. In fact, the Council can cite these positive aspects if allowing this appeal, to distinguish it from others. Precedent in planning is about consistency, yes, but consistency with the development plan and material considerations. Here we have material considerations (immunity from enforcement, improvements made, etc.) that are **unique**. This reduces the weight that “precedent” should carry as a reason to deny this one.
- **Avoiding Cumulative Erosion:** The slippery slope argument suggests a floodgate opening. However, the Local Review Body can rest assured that **controlled, limited adjustments** to garden boundaries will not inevitably erode the green network if managed properly. The Council has tools to prevent cumulative loss: they can refuse those that do cause harm, and for any they do allow, impose conditions (such as PD right removal and preservation of greenery) to ensure the green character remains. In effect, **the Green Space Network can be maintained even with a few boundary modifications**, so long as the continuity of the habitat and path network is preserved. In this case, the continuity is preserved. If a future proposal would genuinely break continuity (e.g. fencing off a section that cuts the path or isolates a part of the woods), it can be rejected on that basis alone. Approving this appeal would not take away the Council’s ability to protect the Network at large.
- **Precedent of Improvement:** Another perspective is that allowing this could set a **positive precedent** that the Council supports residents who *improve and care for adjacent land* responsibly. There are instances where community or individual stewardship of open space is encouraged, especially when budget constraints limit public maintenance. This could be seen as one such instance. The **strategic goal** of making Aberdeen “a more attractive place for residents” (as per the Strategic Development Plan) is served by collaborative efforts to keep areas tidy. The appellant’s proposal aligns with that goal, and an approval could encourage others to approach the Council with proposals to similarly enhance bits of land (with proper oversight), rather than doing so clandestinely. In other words, a measured approval can be part of a **balanced approach to open space management**.

Ultimately, the precedent argument is not a compelling reason on its own to refuse a development that is otherwise acceptable. The Scottish Government’s planning guidance generally advises against using precedent as the sole reason for refusal unless the cumulative effect is a clear and immediate risk. Here, any future cumulative effect is speculative and avoidable with continued policy control. The appellant respectfully asks the Review Body to judge **this proposal on its individual merits**, which we believe are sufficient to justify approval regardless of potential future applications by others.

Legal Considerations: Enforcement Time-Bar and Planning Fairness

In addition to the policy and factual considerations above, there are **legal/procedural factors** that the appellant urges the Review Body to consider:

- **Immunity from Enforcement (4-Year Rule):** The fence, gate, and steps were substantially completed over four years ago (circa 2019). Under Section 124(1) of the Town and Country Planning (Scotland) Act 1997, **unauthorised operational development becomes lawful if no enforcement action is taken**

within four years of completion. This provision is commonly referred to as the “4-year rule,” granting immunity to structures like fences after that period. Consequently, as of today, the Council **cannot legally compel removal of the fence, gate or steps** via enforcement notice the time window to do so has lapsed. This is a crucial material consideration. It means that, **regardless of the outcome of this appeal, the physical enclosure is likely to remain in place.** Even if planning permission is not granted for the change of use, the fence itself stands as lawful (through passage of time). The practical effect is that the land will remain enclosed and inaccessible to the public moving forward. Therefore, refusing permission and attempting to revert the use of the land serves little purpose, since the primary feature that “removed” the land from the open space (the fence) cannot be removed by law. Approving the change of use would simply regularize the situation and allow reasonable controls (like conditions) to be put in place, whereas denying it could lead to a planning stalemate where the fence stays but the use is technically unauthorised a paradoxical and unenforceable situation.

- **Ten-Year Rule for Use:** It is acknowledged that while operational development is subject to a 4-year enforcement limit, a material change of use (such as using open land as garden ground) typically has a 10-year limit for enforcement. In theory, the Council could pursue enforcement against the *use* of the land (as opposed to the operational works) since the use began in 2019, less than 10 years ago. However, such enforcement would be highly unusual and arguably **ineffectual** without removal of the fence. The most the Council could do is issue a notice to stop using the land as garden ground which might entail the appellant no longer mowing or placing any items there but the land would still be fenced off and remain in limbo. This underscores that a *sensible planning outcome* is preferable to a technical enforcement stance. The appellant seeks to resolve the matter constructively through this appeal, rather than allow it to become an enforcement dispute. The Review Body has the opportunity to grant permission with conditions that address any remaining concerns, thereby bringing the development under proper planning control moving forward.
- **Fairness and Proportionality:** The appellant acted with good intentions and, once made aware of the need for permission, followed the proper process. It would be disproportionate to now force an undoing of the development, especially given the immunity on the structure itself and lack of harm. Scottish Planning Policy (and indeed the Council’s own enforcement charter) emphasize that **enforcement should be a last resort and focus on resolving harm rather than punishing technical breaches.** Here, there is no harm to resolve only a technical breach to regularize. The spirit of the law would be better served by approving the application (with any necessary safeguards) than by rigidly enforcing a reversion that benefits no one.
- **Transparency of Designation:** The appellant also wishes to highlight the importance of transparent designation of open spaces. If the subject land had been clearly marked or known as protected community open space, the appellant would not have encroached upon it. The lack of signage or maintenance gave every appearance that it was an *unused leftover*. The planning authority could consider, going forward, clearly delineating the boundaries of public open space in new developments (through fencing, mapping or land title conditions) to prevent confusion. This case can serve as a learning point: residents often maintain adjacent land innocently, not realizing it falls under open space policy. A fair outcome here allowing the use to continue acknowledges this reality.

In conclusion on legal aspects, the presence of the **enforcement time-bar** is a strong equitable factor in favor of the appellant. It means the current situation will largely persist; thus, granting permission simply acknowledges that reality and allows the Council to attach conditions to safeguard the public interest (e.g. no further encroachment, no sheds, retention of green character). This is a more balanced approach than refusal, which would likely lead to an unnecessary enforcement impasse. The appellant respectfully asks the Review Body to consider the principle of **proportionality in planning control**, and to conclude that approving this small-scale retrospective application is a proportionate response given the circumstances.

Conclusion

For the reasons detailed above, the appellant submits that the refusal of planning permission was not justified on the planning merits of this case. The development at 43 Middleton Circle has **caused no loss of trees or meaningful open space**, poses **no threat to biodiversity** (indeed it provides modest enhancements), and has **negligible impact on the character** of the area. Any potential concerns such as future use of the land or cumulative effects can be satisfactorily managed through conditions and the development management process, rather than outright refusal.

Crucially, **the proposal accords with the overarching aims of both NPF4 and the ALDP 2023** when these policies are properly interpreted in context:

- It **aligns with NPF4's climate and nature objectives** by safeguarding green space and integrating biodiversity measures (responding to Policy 1 and 3's call for nature-positive action). It **avoids any loss of ancient woodland** in substance, upholding Policy 6. It respects the natural place and local ecosystem (Policy 4). It represents a **sustainable, place-based solution** to a minor issue, fitting within the concept of local living and community responsibility.
- It **meets the intent of ALDP 2023 policies**: Policy NE2 (Green & Blue Infrastructure) is satisfied by the continued protection of the GSN's value (the development does not diminish wildlife, access, or landscape value of the network). Policy NE5 (Trees & Woodland) is not offended since no trees were taken and any future planting could occur just as well outside or even inside the fence if desired. Policy D1 (Quality Placemaking) is met through a context-sensitive design of the fence and maintenance of a quality environment. Policy H1 (Residential Areas) though not explicitly cited generally permits householder development that does not adversely affect amenity; here, no neighbors are negatively affected (no objections from immediate neighbors were recorded, only one general objection on policy grounds). The **Householder Development Guide** criteria for garden extensions (such as not impinging on amenity or landscape character) are, on balance, met by this proposal, given its minimal footprint and hidden location.
- **Material considerations** (immunity from enforcement, lack of harm, improvements made) further tip the balance in favor of approval, as they indicate that the development is established and causing no issues, whereas refusal/enforcement would yield no positive outcome.

The appellant respectfully emphasizes that **disallowing this development would be a disproportionate response**. It would neither meaningfully re-establish any public benefit nor address any genuine planning harm – because none is occurring. In contrast, **allowing the development to remain with appropriate conditions** would regularize the situation and acknowledge the appellant's contributions to the site's upkeep, while ensuring the planning authority retains control over any future changes.

In conclusion, the appellant humbly requests that the Local Review Body **uphold the appeal and grant planning permission**, subject to any conditions deemed necessary (such as removal of permitted development rights on the extended garden area, or an obligation to maintain wildlife features). This outcome would be consistent with a fair and reasonable application of planning policies and would demonstrate the Council's commitment to proportionate enforcement, community collaboration, and common-sense planning. The development at 43 Middleton Circle is a minor change that **improves rather than harms the locality**, and we trust the evidence presented herein has made a compelling case for a positive review decision.

Neighbour Precedent and Local Context

It is important to note that at least **eight neighbouring houses** in the immediate vicinity have enclosed adjoining green space and extended their boundary fences, some of which have been in place for over five years. These enclosures are now well integrated into the landscape with established planting and, in some cases, garden walls under construction. One nearby neighbour was granted retrospective planning permission after enclosing more land than originally approved a directly comparable situation. This demonstrates that such small-scale changes have been tolerated and accepted by the planning authority in the same area. Furthermore, efforts were made to identify and approach the legal landowner to explore the potential purchase of the strip, showing that the current occupants have sought to regularise the matter through the appropriate channels.

Note images have been attached as part of the submission pack as evidence.

Aberdeen LRB Cases Supporting Retrospective Fences and Garden Extensions

6 Parkhill Avenue – Retrospective Front Garden Fence Allowed (2022)

Summary: A homeowner at 6 Parkhill Avenue (Dyce/Stoneywood area) had erected a 1.8m timber fence around their front garden (open to an area of open space) without permission, and the officer refused it citing an out-of-character height and visual impact. On review, the Local Review Body (LRB) overturned the refusal by a 2–1 vote. The LRB noted that **at least five other nearby properties already had similar front fences**, so the proposal was not out of character and precedent already existed. The applicant had argued the fence improved privacy and **safety for a young child by keeping them away from an adjacent fast-flowing burn** (stream). The LRB agreed the fence provided privacy/security for the residents and, if painted a muted green, its visual impact on the open space would be minimal. A condition was applied requiring green staining of the wood to help it blend in. **In essence, the LRB found no significant harm to the area’s amenity or character once mitigated, and recognized the practical benefits to the homeowner.** This case supports the Middleton Circle appeal by showing that a retrospective fence can be approved when it does not demonstrably harm the locale – especially if similar fences are already present and it yields some safety or amenity benefit to occupants.

85 Arnage Drive – Amenity Land to Driveway (Open Space Enclosed) Allowed (2017)

Summary: This case involved the change of use of a grass amenity strip in Bridge of Don to form a private driveway, which included removal of one mature tree. The officer had refused it for loss of open space/landscape character and setting a precedent. The LRB unanimously **allowed the appeal and granted permission**. In their decision, they concluded that converting this **small piece of land would not harm the area’s character or public amenity**, noting that **“there are already a number of similar arrangements in the surrounding area”**, so it wouldn’t set a new precedent. They found the proposal compliant with relevant policies on design, landscape, open space, trees, and residential amenity. The LRB did express concern about losing a street tree, but rather than refusing the application, they added an *advisory note* suggesting the applicant plant a replacement tree nearby. Notably, the applicant’s review statement had pointed out that **only one tree would be lost, the area of land was small and in a poor/unmaintained state, and on-street parking was a known issue** (making a driveway useful). These factors helped demonstrate a lack of significant harm – the open space had limited value and its enclosure actually solved a local problem. **Relevance to 43 Middleton Circle:** The Arnage Drive decision shows that the LRB can permit enclosure of amenity land when the land is of modest size and low public use, especially if similar enclosures exist nearby. The key was showing no real loss to public amenity or landscape character; in Arnage, the LRB decided there was “no loss of amenity or character” and thus no conflict with policies. Likewise, if the Middleton Circle fence/garden can be shown to cause no clear public detriment – for example, if it’s a long-standing use or neighbors have done the same the LRB could view it favorably despite policy presumptions against losing open space.

57 Louisville Avenue – Side Garden Fence and Extension Allowed (2019)

Summary: At 57 Louisville Avenue (Bridge of Don area), an application for a two-storey rear extension *and* a new timber fence/gate to enclose the side garden (on a corner plot) was initially refused, but the LRB allowed it. A factor in approval was that the house sat on a **large plot with very limited public visibility of the fenced area** and extension. The LRB found the extension and fence would cause *“no significant adverse impact on the character or amenity of the surrounding residential area,”* satisfying Policy H1 (Residential Areas). They also noted **no objections from the public or community council** and no privacy or daylight impacts on neighbors, indicating a lack of any demonstrable harm. A condition was added requiring the materials/finishes (including for the fence) to be agreed, to ensure quality appearance. **Support for Middleton Circle:** This case underlines that where a fence/enclosure has **minimal landscape impact and no public opposition**, the LRB is inclined to approve. If the 43 Middleton Circle fence has similarly little effect on neighbors’ enjoyment or the streetscape – for example, if it’s tucked away or screened such that the general public hardly perceives a change – the LRB could be persuaded that the change of use and fence are benign. The Louisville Avenue decision shows the LRB weighing the absence of negative impacts or complaints as a reason to grant permission for a retrospective enclosure.

Consideration of Amenity and Biodiversity Benefits in Enclosure Cases

In some cases, applicants have successfully argued that enclosing and managing a previously neglected open plot can **improve local amenity or biodiversity**. For example, in a recent appeal for land at Craigden (Hazlehead area), although ultimately refused on policy grounds, the applicant’s supporting statements highlighted that the fenced-off area had been **“bramble and rubbish filled”** and subject to vandalism before, but after enclosure it became **“well maintained,” with trees and shrubs planted, resulting in a “tidier area” and a “positive contribution to the community”**. They argued that keeping the fence allows the land to rewild and new trees to establish safely, thereby **enhancing biodiversity and greenspace value** over time. These points show a recognition that *not all open space is inherently of high amenity value* – if an area was effectively unusable or littered, private upkeep can make it more attractive and ecologically rich. For 43 Middleton Circle, if evidence shows the fenced plot was little-used by the public and that the change to garden ground has **cleaned up the area or enabled planting of greenery**, those improvements to public amenity and biodiversity are material considerations. The presence of **supporting letters from neighbors** or the community noting the positive changes (as was seen in Craigden’s case) would bolster the argument that there is no public loss – indeed a net gain – from allowing the fence to remain. Such benefits could help demonstrate that, in this specific instance, the strict open-space policies can be relaxed without undermining the broader green network. Essentially, if the appeal can show **lack of demonstrable harm** (no loss of accessible recreational space or important habitat) and **some positive outcomes** (neighborhood aesthetic or environmental improvements), it would align with the spirit of these prior LRB decisions that favored pragmatism and site-specific merit over a purely theoretical loss of open space.

Conclusion

In summary, several Aberdeen City LRB decisions have allowed retrospective fences or garden extensions where the proposal did not significantly erode public amenity or neighborhood character. Key factors include: the presence of similar enclosures nearby (so no new precedent is set); **minimal visual or landscape impact** after mitigation (e.g. using appropriate colors/materials); no obstruction of any important public access or use; and tangible benefits such as improved privacy/security for residents or better upkeep of the land. Importantly, the LRB has been willing to depart from strict policy where they found **no material harm and some community/neighborhood support or benefit** – as seen at Parkhill and Arnage. These cases can be cited to support the 43 Middleton Circle appeal: they suggest that if the fenced-off amenity land is shown to be of **low public utility and high private/local benefit**, and if its enclosure does not upset the area’s character or green network in any meaningful way, the LRB has a basis to overturn the refusal and grant permission. Each case is

decided on its own merits, but the precedent in Aberdeen is that **small-scale encroachments on amenity space have been permitted when they do not adversely affect public amenity, biodiversity, or landscape character**. The appeal at 43 Middleton Circle can be strengthened by highlighting these decisions, drawing parallels (e.g. long-standing use or lack of public impact) and emphasizing that, as in those cases, there is no *demonstrable* harm caused by the development. The LRB could therefore reasonably allow the fence and change of use in this instance, just as it has in comparable situations.