



Strategic Place Planning

Report of Handling by Development Management Manager

Site Address:	The Mount, The Bush, Aberdeen AB14 0UA
Application Description:	Change of use of amenity land to domestic garden ground and erection of fence (partly retrospective)
Application Ref:	240753/DPP
Application Type:	Detailed Planning Permission
Application Date:	24 June 2024
Applicant:	Mr and Mrs J Strachan
Ward:	Lower Deeside
Community Council:	Culter

DECISION

Refuse

APPLICATION BACKGROUND

Site Description

The application site comprises a c.300sqm area of open space to the northeast of a semi-detached dwellinghouse known as 'The Mount' in Peterculter. The site has been the subject of an unauthorised change of use to garden ground associated with this dwelling. An unauthorised fence has also partially been erected around the area, alongside a pergola structure and paving, which do not have planning permission. Prior to the unauthorised change of use, the site formed part of an area of a large area of open space which surrounds the site to the west, north and east and is mature woodland. The trees on the site are protected by a Tree Preservation Order and historic maps dating from 1866 indicate that the area has continuously been woodland, pre-dating much of the development of Peterculter.

Relevant Planning History

Detailed Planning Permission (Ref: 210681/DPP) granted the erection of a single storey extension to the rear of the dwellinghouse in 2021.

Consent to Carry Out Works to Protected Trees 220757/TPO retrospectively granted consent to cut down one tree due to storm damage and to prune the branches of four other trees to encourage overall health/growth. The trees are within the application site boundary, including the tree that was removed.

Consent to Carry Out Works to Protected Trees 161332/TPO granted consent to works to 24 protected trees, including the removal of six trees, and crowing and pruning others. Many of these trees are within the application site boundary.

APPLICATION DESCRIPTION

Description of Proposal

Planning permission is sought partially retrospectively for the change of use of the application site from amenity land to domestic garden ground and for the erection of a fence to enclose the area. The fencing is c.2m in height. It projects approximately 11.5m beyond the established curtilage boundary to the north of the site (and that of the adjacent property) and there are c.21m, c.5.5m and c.11.5m long sections of fence, enclosing the area that extends to approximately 300 sqm .

The existing pergola and paving on the application site, which do not have planning permission, are not included in this application.

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=SFA9SPBZGU500>

- Planning Statement
- Supplementary Planning Statement

CONSULTATIONS

ACC - Roads Development Management Team – No objection as it would not impact or impede visibility along The Bush.

Police Scotland – No response received.

Culter 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 making any determination under the planning acts, regard is to be had to the provisions of the Development Plan; and, that any determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

Development Plan

National Planning Framework 4

National Planning Framework 4 (NPF4) is the long-term spatial strategy for Scotland and contains a comprehensive set of national planning policies that form part of the statutory development plan.

- Policy 1 (Tackling the Climate and Nature Crises)
- Policy 2 (Climate Mitigation and Adaptation)
- Policy 3 (Biodiversity)
- Policy 6 (Forestry, Woodland and Trees)
- Policy 14 (Design, Quality and Place)
- Policy 16 (Quality Homes)

Aberdeen Local Development Plan 2023 (ALDP)

- Policy D1 (Quality Placemaking)
- Policy D2 (Amenity)
- Policy H1 (Residential Areas)
- Policy NE2 (Green and Blue Infrastructure)
- Policy NE5 (Trees and Woodland)

Aberdeen Planning Guidance

- The Householder Development Guide

EVALUATION

Principle of Development

One of the overarching spatial principles of NPF4, 'Local Living', sets out that improving community health and wellbeing can be achieved by ensuring people can easily access greenspace. The Qualities of Successful Places referred to in Policy 14 (Design, Quality and Place) of NPF4 seeks development to be designed for healthy and active lifestyles, through access to nature and greenspace. Paragraph 6.21 of the ALDP states:

'Access to the outdoors for informal recreation contributes to everyday quality of life. Increased levels of physical activity outdoors can contribute to improved health and wellbeing, while access to high quality areas for outdoor recreation can make the city a more attractive place to live and work. Well managed access can also assist land management and contribute to an appreciation of the environment and natural heritage.'

Policy NE2 (Green and Blue Infrastructure) of the ALDP states that we will protect, support and enhance the city's urban green space and that development proposals that do not achieve this will not be supported.

The application site lies within a residential area, as zoned on the Proposals Map of the Aberdeen Local Development Plan 2023 (ALDP). The proposal is for the change of use of open space to expand an area of existing residential curtilage and for the erection of a domestic fence to enclose the residential curtilage. Applicable to the development, Policy H1 (Residential Areas) of the ALDP

states that within existing residential areas, proposals for new householder development will be approved in principle if it:

1. *does not constitute over-development; and*
2. *does not have an adverse impact to residential amenity and the character and appearance of an area; and*
3. *does not result in the loss of open space.*

As such, there is a presumption in both national and local planning policy in retaining and improving open space. The proposal to remove an area of open space conflicts with the aims of Policies H1 (Residential Areas) and NE2 (Green and Blue Infrastructure) of the ALDP.

The Householder Development Guide Aberdeen Planning Guidance does, however, allow some circumstances where changes of use from amenity space to garden space may be acceptable, where the space is a small incidental area of ground that makes little contribution to the appearance of the neighbourhood or where they are small corners of space that can be logically incorporated into garden ground by continuing existing fence lines. This is considered in the evaluation.

Loss of Woodland and Impact on Biodiversity

To assess the contribution of the space to the area, the Open Space Audit 2010 is of relevance. The site is identified on the Open Space Audit 2010 as being part of 'The Bush', forming part of the open space provision and amenity space serving the area, as well as forming a linking space between the areas of the wider green space network. The area scored highly in the Open Space Audit, particularly in terms of biodiversity and its placemaking values. Whilst the audit was undertaken several years ago, prior to the unauthorised change of use there have been no material changes to the space in the time since and the area was of significant biodiversity and place value. The site was likely of some informal recreational value, albeit there were no paths in the site and thus access to the space would likely have been limited.

Policy 6 (Forestry, Woodland and Trees) of NPF4 states that development proposals will not be supported where they result in adverse impacts on native woodlands of high biodiversity value. Policy NE5 (Trees and Woodland) of the ALDP states that development should not result in the loss of woodlands. Policy 3 (Biodiversity) of NPF4 states that development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them

Historic maps dating from 1866 indicate that the site and the wider open space had been woodland, pre-dating much of the wider development of Peterculter. Whilst not within the defined Green Space Network itself, the site comprised mature natural habitat and provided linkages to the wider Green Space Network to the north, west and southwest of the site. Whilst there is insufficient evidence to definitively state that no trees have been removed, the change of use of the space has resulted in the removal of dense vegetation and shrubs, and a lawn has been laid. Furthermore, the grant of planning permission would afford the proposed residential curtilage with 'Permitted Development Rights' by way of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. This could result in the built development of the site, unless these were specifically removed by condition (although it is unlikely that such a condition would meet the required tests to apply conditions as it would apply to only part of a residential curtilage).

Whilst neither a detailed ecological appraisal or an arboricultural assessment has been submitted with the application, the proposal results in the loss of natural open space, which previously comprised an area that contributed to biodiversity. Whilst there are some trees on the site which remain (and these are protected by a Tree Preservation Order, as has been recognised in the

Supplementary Planning Statement), the loss of the space, removal of much of the vegetation from the site which are not protected by the Tree Preservation Order, and permitted development rights which would resultantly be afforded would adversely affect biodiversity.

It is recognised that the Supplementary Planning Statement refers to proposed use as a garden area providing the opportunity to enhance biodiversity through considered planting of flowering and berry bearing species. Whilst this is welcomed, it is considered that a planning condition requiring such measures would place an unreasonable restriction on the use of a private residential curtilage and is thus unlikely to be enforceable. There would be a risk that such plants may be removed in the future, particularly as the curtilage would be afforded domestic permitted development rights whereby it could be developed. As such, there are no identified mitigation measures that would overcome the detrimental impact to biodiversity. As open space and woodland, the site would remain undeveloped in perpetuity, being able to return to natural woodland and the adverse impact on biodiversity from the unauthorised works would be reversed.

As such, in conflict with the Householder Development Guide Aberdeen Planning Guidance, the change of use results in the loss of part of an area of open space and woodland that contributes significantly to the biodiversity of the area. The proposal thus conflicts with Policies 3 and 6 of NPF4, as well as NE5 of the ALDP.

Landscape Character and Visual Amenity

In determining whether the proposed development would adversely affect the character and appearance of the area, Policy 14 (Design, Quality and Place) of NPF4 is relevant. Policy 14 encourages and promotes well-designed development that makes successful places by taking a design-led approach. Policy D1 (Quality Placemaking) of the ALDP substantively reiterates the aims and requirements of Policy 14.

The Householder Development Aberdeen Planning Guidance states that such proposals should not result in an irregular boundary layout that would be out of keeping with the otherwise uniform character of the area. Whilst the area is not of a 'uniform character' and the established residential curtilage of the application property and the adjacent property, Westview, is uniquely surrounded by wooded space, the proposal results in an irregular boundary layout whereby it would extend irregularly c.11.5m beyond the northern boundary line of the curtilage Westview, into the open space, irregularly narrowing the area of woodland. Given the unconventional layout of the site, the change of use would not, as expected by this guidance, be logically incorporated into the garden ground by continuing existing fence lines. The irregular layout is thus inconsistent with the established pattern of development and the character of the area, in conflict with Policies 14 of NPF4 and H1 and D1 of the ALDP.

Policy 16 (Quality Homes), paragraph (g) of National Planning Framework 4 (NPF4) states that householder development proposals will be supported where they 'do not have a detrimental impact on the character or environmental quality of the home and the surrounding area, in terms of size, design and materials'.

In terms of visual impact, the site is not readily visible from public vantage points because it is screened by the mature trees and vegetation surrounding the site, as well as the dwellinghouse itself. The change of use would not detract from the visual amenity of the area by any significant degree. Whilst the vegetation that has been removed contributes to the local landscape character and biodiversity, their removal does not have a significant impact on the visual amenity. The fence would be of domestic design, materials and height that is appropriate as rear curtilage boundary treatment.

Tackling the Climate and Nature Crises

Policy 1 (Tackling the Climate and Nature Crises) of NPF4 requires significant weight to be given to the global climate and nature crises in the consideration of all development proposals. Policy 2 (Climate Mitigation and Adaptation) of NPF4 requires development proposals to be designed and sited to minimise life-cycle greenhouse gas emissions as far as possible, and to adapt to current and future risks from climate change

Whilst the development is of a small scale, the proposal would have an adverse impact on biodiversity and no mitigation is proposed. There are furthermore no material considerations in assessing this development proposal whereby it could be considered to be placing significant weight on the global climate and nature crises, given the change of use results in the permanent loss of an area of mature woodland and open space which contributes to biodiversity. As such, proportionate to the scale of the development, the proposal conflicts with the aims of policies 1, 2, and 3 of NPF4.

Precedent

The proposal conflicts with the Householder Development Guide Aberdeen Planning Guidance in that it comprises a proposal that would *'fragment or, if replicated, be likely to incrementally erode larger areas of public open space or landscaping'*. Given there are no examples of any similar proposals having been granted in the area, approval of this planning application could set a precedent for the incremental erosion of this open space as a result of similar proposals in the area. Over time the cumulative impact of the loss of areas of ground could lead to the gradual erosion of the open space, woodland, biodiversity and the character and amenity of the surrounding area, which would not be in the public interest, and exacerbating the matters set out above.

The Householder Development Guide Aberdeen Planning Guidance states that *'the proposal should not worsen or create a deficiency in recreational public open space in the area. The less amenity space there is in an area the more value is likely to be placed on the existing amenity space.'*

Whilst the change of use of this individual space does not create a deficiency in recreational public open space in the area, the precedent for similar proposals and possibility of piecemeal reduction of the open space would worsen the overall provision of informal recreational open space in the area, which would be to the detriment of public amenity. Given there are residential curtilages bounding the space in the area, approval of this change of use could set a precedent for the incremental erosion of this open space from similar proposals in the area. Over time the cumulative impact of the loss of areas of ground could lead to the gradual erosion of the open space and damage to the biodiversity and the character and amenity of the surrounding area, which would not be in the public interest.

Residential Amenity – Presence of Fence

Policy 16 states that householder development proposals will be supported where they do not have a detrimental effect on the neighbouring properties in terms of physical impact, overshadowing or overlooking. Notwithstanding the conflicts with the loss of the open space, the physical presence of the fence is not of height nor of a location whereby it impacts the residential amenity afforded to neighbouring dwellings by way of overlooking or overshadowing, in accordance with Policy 16 of NPF4, as well as Policies D1 and D2 of the ALDP and the Householder Development Guide Aberdeen Planning Guidance. The impact on residential amenity from the presence of the fence therefore does not constitute a reason to refuse planning permission.

Overdevelopment

With respect to the requirement of Policy H1 of the ALDP for proposals to '*not constitute over-development*', guidance on what constitutes this is set out within 'General Principles 4 and 5' in the Householder Development Guide. It generally relates to the proportion of garden ground built upon by new buildings and extensions. Whilst the proposal would thus not constitute over-development, the grant of planning permission would afford the proposed residential curtilage with 'Permitted Development Rights' by way of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, which could result in new buildings being built without the need for express planning permission on what has been long-established woodland.

Other Matters Raised in the Supporting Statement

The constrained size of the original garden relative to the size of the dwellinghouse has been raised in the Supporting Statement as justification for the change of use, as the proposal would increase the size of private garden ground serving the property. The location plan indicates that approximately 25% of the rear curtilage was previously developed upon (albeit it is noted that the location and site plans are not accurate as the extension shown on the plan appears to outline the conservatory that existed prior to the extension approved by Detailed Planning Permission 210681/DPP, which has since been replaced). The Supporting Statement also refers to the rear garden having extended no more than 2m beyond the built footprint of the house, which does not correspond with the submitted plans. Based on the information submitted, it is not considered that the garden ground was previously over-developed and this does not justify the loss of open space and habitat that has resulted.

Supporting information states that the change of use and enclosure of the space with a fence has also been undertaken because there had been issues with anti-social behaviour. No evidence of this behaviour has been submitted with the application. Nevertheless, it must be highlighted that the misuse of land and crime having taken place is not a material planning consideration in assessing the loss of open space. It does not constitute sufficient justification for the loss of open space and does not justify the prevention of responsible access and recreational use for the wider public. These are matters that would properly be addressed by the police and through crime prevention measures.

DECISION

Refuse

REASON FOR DECISION

The change of use of this land to domestic garden ground and the erection of fencing results in the enclosure and loss of an area of open space and mature woodland habitat of local biodiversity value and that contributes to the character of the surrounding area. The proposal thus conflicts with Policy 6 (Forestry, Woodland and Trees) of National Planning Framework 4 (NPF4) and Policies H1 (Residential Areas) and NE2 (Green and Blue Infrastructure) of the Aberdeen Local Development Plan 2023 (ALDP). The siting of the fence and resultant irregular boundary layout is inconsistent with the established pattern of development and adversely affects the character of the area, in conflict with Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4, and Policy D1 (Quality Placemaking) of the ALDP and the Householder Development Guide Aberdeen Planning Guidance.

Commensurate with the scale of the proposal, the development does not place significant weight in positively addressing the global climate and nature crises, which is contrary to Policies 1 (Tackling the Climate and Nature Crises, 2 (Climate Mitigation, and Adaptation) and 3 Biodiversity of NPF4.

Notwithstanding every application is assessed on its merits, in conflict with the Householder Development Guide Aberdeen Planning Guidance, 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 open space and habitat. Such an approach would exacerbate the adverse impacts and cumulatively be significantly detrimental to the biodiversity, character and amenity of the area