

**REQUEST FOR PLANNING REVIEW
REFUSAL OF PLANNING PERMISSION 240753/DPP
CHANGE OF USE OF LAND TO GARDEN GROUND AND ERECTION OF FENCE
THE MOUNT, THE BUSH, PETERCULTER, ABERDEEN**

Introduction

This report sets out the grounds of appeal against the refusal of planning permission for the change of use of small area of undeveloped private land to extend garden ground together with the repositioning of an existing garden fence. The site is located at The Bush, Peterculter and relates to the link detached property known as The Mount.

The Review Statement sets out the material planning considerations and addresses the Reasons for Refusal, which, it is contended, demonstrate that the proposal is acceptable, and planning permission should be granted.

The planning application was submitted on 18 June 2024 and the decision notice is dated 14 March 2025. The request for a Review is submitted within the statutory 3-month period.

Background

It is important to establish the planning background to the proposal and the reasons why the applicants, Mr and Mrs Strachan, had sought to secure an additional area of garden ground to the rear of their property.

The site comprises a link-detached 1.5 storey house. It has been the family home for the applicants. The rear of the property adjoins an area of rough ground and woodland. For years it has been under the ownership of Peterculter Estates, who, as the photographs demonstrate, have neither maintained nor tended the area for the entirety of the time the applicants have lived in the house (some 29 years).

Recently, they had the opportunity to purchase a small section of the land, an area that is conterminous with their existing site boundary. The land was purchased, and Mr and Mrs Strachan now own the land. The land involved is a 15 m wide strip of the woodland area to the north and east of the existing boundary, but the application site is considerably less at only 12 metres wide, primarily to the north of the existing boundary (approximately a third of the land purchased).

The existing site plan and photographs indicate the restricted and limited area of back garden that the Strachan's have. This means that there is barely 2 metres between the rear of the house and the plot boundary. The rear boundary is defined by a 1.8m high timber fence.

The applicants recently gained planning permission for a replacement single storey extension to the rear. It is situated on the same footprint as the conservatory it replaces. The photographs indicate that the rear elevation of the extension is very close to the fence leaving little room to manoeuvre around the rear of the site. In addition, as the red line site boundary indicates, the east and north corner of the house is also at the outer limits of the site boundary.

It was for these reasons that the applicants sought to extend their garden and at least have an area between the house and boundary fence that enabled movement between the areas.

It is also worth explaining that when the application was submitted for the replacement extension, it also included an extended rear garden area. This was shown on Drawing Rev B (Production 9). At no time during the assessment by the case officer was any issue raised with the extended site area. The applicants and their agent had no reason to assume there was a concern. It transpires that on the day of the issue of the planning permission, a revised drawing, Rev C was requested, and it was this plan that was subsequently approved. The applicants were not made aware of this significant, last minute, alteration to their site boundary. Moreover, given that the case officer had at no time raised the extended garden area as a problem, despite requests for clarification, it has never been explained to the applicants what the issue was and why a revised drawings was required.

It should also be noted that the requisite building warrant was applied for. This was issued in September 2021. The site plan approved by the Building Control officers was Rev B (Production 9). The situation is such that the applicants have an approved Site Plan Rev B for their building works and a last minute amended Rev C version approved under planning permission.

It is easy to understand that the applicants were unaware of the last-minute change and had acted entirely in good faith when they proceeded to erect the replacement fence and create a garden area. It was only in 2022, following a visit by the planning inspector, that the discrepancy between what had been approved at planning and building warrant was advised to the Strachan's. The purpose of the visit was to confirm whether or not an application involving the removal of a damaged tree was required.

For the avoidance of any doubt, none of the trees within the extended garden area has been felled. The garden area has retained the trees, it is only the scrub and young, immature seedlings that have been cleared. This is evident from the attached photographs. One TPO tree was previously removed as it was damaged in the 2020 storms and was in a dangerous condition. Following the visit by the planning inspector, a retrospective application for the felling of the tree was submitted and approved.

The applicants are fully aware of their duty to maintain and retain the tree cover, area aware of the TPO status of the trees within their ownership, and have no intention of felling any of the trees.

In summary, the planning case officer altered the site boundary area on the day the permission was issued. At no time during the assessment was any issue raised with the extended garden area, the applicants had been totally upfront in seeking an extended garden area and, with the lack of any contact with the planners, were unaware of the last-minute change to the site boundary. The fact the building warrant approved the extended area reaffirmed their assumption that the boundary changes had been approved. As is normal, the actual build was based on the more technical building warrant drawings. (Production 9)



Existing rear boundary with extension roof of the original conservatory clearly visible. The area reserved for a rear garden is very limited and provides no real amenity or meaningful private space.

Yellow line denotes the approximate position of the new fence and land area of the extended garden. Note extent of woodland area beyond the proposed new boundary

The area of land that was purchased, as can be seen from the photographs, comprises rough land interspersed with trees. It separates the applicants house from the properties to the east on Dalmaik Crescent. No one has maintained the land.

The applicants seek to relocate their rear fence by extending into the land they now own by a maximum of some 12 metres. This will provide them with a useable garden space, provide privacy and amenity and will not undermine the integrity of the remaining land which, it is understood, remains in the ownership of Peterculter Estate.

The area involved is a roughly rectangular area that extends from the east gable, wraps around the rear elevation and extends the mutual historical boundary to the east by some 12 metres. The total area is set out on Figure 1.

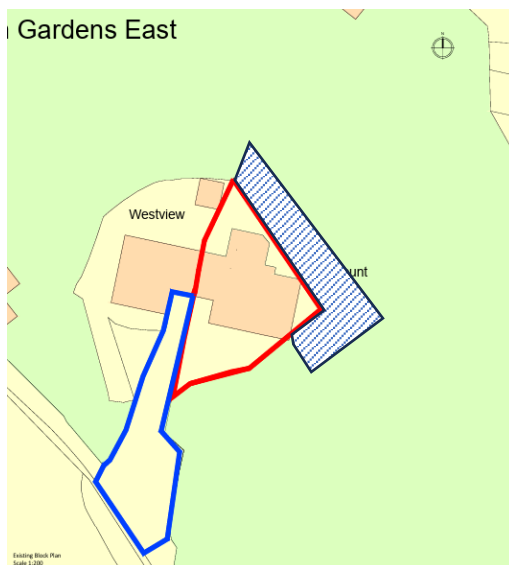


Figure 1

Existing site ownership boundary: note the very limited rear garden area and location of the rear boundary which is hard up against the gable walls and rear extension.

Hatched area denotes approximate extended garden area involved

This is all that the applicants seek: to replace their existing boundary fence and enclose an area of land to provide a meaningful area of private rear garden ground.



Existing rear garden, with original conservatory, demonstrating the very limited area and restricted private garden space.

Note scrub land to the other side of the fence in which the applicants seek to extend their garden area

Yellow line is the approximate extent of the new boundary, note the woodland beyond which is unaffected

The historical reason for the limited rear garden is not known but that is not a reason to justify a refusal when the existing situation is less than satisfactory and significantly limits the applicants' enjoyment of their property.

It is also worth noting that the applicants have only removed undergrowth, retaining the existing trees. This can be verified by a comparison between the photograph showing the original site boundary and the proposed extended area where, it is evident, the existing silver birch remains on site and has not been impacted by the extended garden area. The two photographic packs included as Production 8 clearly show the undergrowth that has been removed which is of no particular value.



*Area of extended garden ground.
Existing trees retained.*

It is against this background that the appeal is made. All Mr and Mrs Strachan seek is to create a rear garden area for their enjoyment, wellbeing and amenity and extend a boundary. Current planning standards would be unlikely to support a proposal where it resulted in such a limited area for private amenity space as presently exists. The narrow rear garden is not conducive to providing useable amenity space. This proposal seeks only to secure a useable and private garden space. There is no intention to remove the woodland, to encroach further or to prevent access by the public through the remaining land. In any event, there is no evidence of informal footpaths through the remaining land.

For reference, the wider area extends well beyond the proposed garden area and fence. This land is unaffected by the proposal. It maintains an area of scrub woodland that separates the site from the surrounding area. The limited area required to form the extended garden area has no effect on any neighbouring property.

Reason for Refusal

The application to extend the rear garden ground was subsequently refused planning permission for the following reasons:

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

Comments on Reasons for Refusal

The following section addresses the reasons for refusal.

- 1 *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.*

Firstly, the adopted Aberdeen Local Development Plan (ADLP) defines the site as Residential. It is **NOT** allocated as amenity space or open space. It is within an area designated as Residential.



Red arrow denotes site area within H1 designation



Hatched area defines approximate area of proposed garden ground extension relative to the remaining woodland area (coloured green)

The area of land take involved is approximately 12 metres wide. The photographs show the existing condition of land involved. It is an area of unmaintained woodland with largely impenetrable undergrowth. The extended garden area does not result in any loss of woodland. None of the trees are affected by the proposal, the majority of which are located outwith the proposed garden area. The trees are, in any event, protected by a TPO: there is no risk to their continued wellbeing and integrity, they are not affected by the proposal. The existing trees included within the proposed garden area are retained as is evident from the photographs.

The local biodiversity value of the site is not adversely affected by the scale of land involved. The wider area is unaffected. The applicants will plant out the garden with new plants that will enhance the biodiversity by introducing new species with an emphasis on berry bearing and flowering species. This will enhance the range of species and habitats available for insects, birds and wildlife. The land is not lost to a built development but will remain as open garden ground. The biodiversity value of a well-stocked garden, particularly for insects, bees, birds etc is well understood and supported.

The proposal does not result in an unacceptable loss of an area of undeveloped land which is, in any event, designated as residential within the adopted ALDP.



Figure 2 - Mature trees (circled) in the background are not affected and remain outwith the proposed new boundary..

- 2 *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).*

Policy 6 of NPF4 seeks to protect existing woodland areas. A review of Figure 2 illustrates that the woodland area is unaffected by the proposal. Its value as a woodland area is protected (as it is with the TPO). The applicant has retained the existing trees in the extended garden. There is no fragmentation of the woodland habitat, the garden area retains the trees and the applicants will plant out appropriate species that enhance and diversify the existing scrub it replaces.

NPF4 Policy 6 does not prohibit development within a woodland area only that there should be no resultant adverse effect. Policy 6 is principally concerned with removal of large areas of existing woodland not small areas of scrub as in this case. This is not an area of ancient woodland, and the proposal has no impact on the integrity of the wider area as a woodland. As has been demonstrated, existing trees will be retained and will, in any event, need permission for removal under the TPO regulations. The planning authority has all the safeguards it requires.

ALDP Policy H1 Residential is based on 3 criteria:

- Does not constitute overdevelopment

- Does not have an adverse impact on residential amenity or the character of the area
- Does not result in loss of open space

The proposal does not result in overdevelopment. There is no adverse impact on residential amenity or the character of the area. As Figure 3 demonstrates, the remaining area is unchanged and provides a visual screen between existing houses. No objections were received from local residents to suggest concerns with impact on residential amenity. The scale of the loss of the open area is minimal when compared to what remains. The site is not defined as open space but H1 Residential. The area involved does not result in an unacceptable incursion into an area of predominantly scrub given the balance of benefits it delivers for the well-being of the applicants.

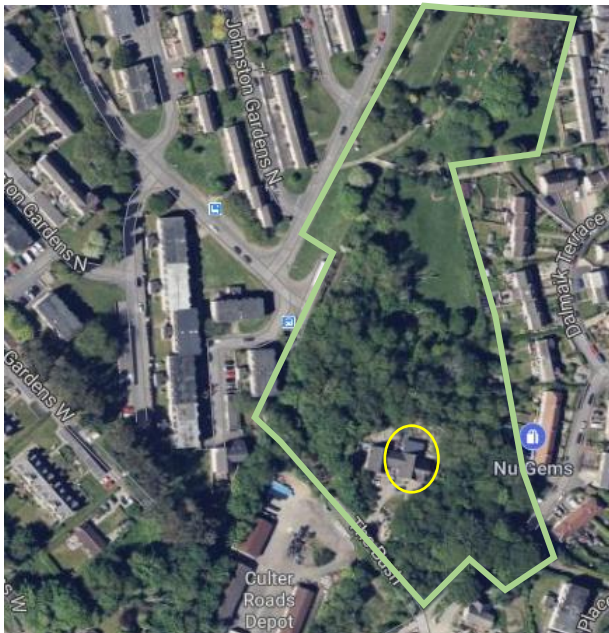


Figure 3

Aerial View of the existing house site (yellow) and remaining area that is unaffected by the proposal with existing TPO trees also unaffected by the proposal (outlined in green)

- 3 *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.*

The proposed fence is a permitted development. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 at Part 2 – Sundry Minor Operations – advises that a fence up to 2 metres in height can be erected provided it is a minimum of 20 metres from a road. The distance to Dalmaik Crescent far exceeds 20 metres as it does to The Bush. The fence can therefore be erected and is not unlawful. It is a permitted development. The shape of the boundary is irrelevant. It is permitted development.

There is no conflict with NPF4 Policy 14 or Policy 16 as the fence is a permitted development.

There is no conflict with Policy D1 of the ALDP as the erection of a fence in this location is permitted development. The fence can remain in situ whatever the outcome of the review.

- 4 *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.

The proposal involves using an area of undeveloped land for garden ground. The reason for refusal gives no basis for the assertion that it fails to address the global climate and nature crises. A piece of undeveloped land is to be used as garden ground. It is not being built on or lost in terms of its biodiversity value or contribution to nature. NPF4 Policy 2 seeks to ensure that emissions from new development are minimised as far as possible. This has no relevance to the scope of development proposed.

There is no conflict with NPF4 Policies 1 and 2 and Biodiversity will be enhanced through careful planting of a variety of species that will enrich the current plant cover and introduce enhanced biodiversity, particularly with berry bearing and flowering species providing habitats for birds, insects etc.

There is no conflict with NPF4 Policy 3 Biodiversity.

- 5 *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*

This reason for refusal is unsubstantiated and without justification. The Householder Development Guide is not concerned with precedent. There is no conflict with the Guide.

Paragraph 2.12 refers specifically to a change of use from amenity space to garden ground. Noting that this is not designated as Amenity Ground, it is nevertheless relevant to address the Guidance. At paragraph 2.12 the Guidance recognises that it 'may be acceptable to include within garden ground secluded areas that are not visible from footpaths or roads and that do not make a contribution to the wider visual amenity of the area.' Production 7

As the attached Photo Packs (Production 8) clearly demonstrate, the incorporation of the area of ground involved to provide an extended garden area does not have any adverse impact on the contribution made by the space to the wider area or to the visual amenity. It is also not visible from footpaths or roads. The proposal accords with the relaxation provided by the Guidance in enabling the change of use of amenity land to form garden ground. There is no conflict with the overarching objectives of the Guidance and the proposal is entirely in compliance with the terms set out in paragraph 2.12 which specifically allows for the change of use of land to garden ground in certain circumstances.

As the Review Body will be fully aware, each application must be assessed on its individual merits, with due regard to material planning considerations. The fact that the applicant is entitled to erect a fence on his land as a permitted development and maintain the land he owns, is a material planning consideration and means that the land in his ownership can be defined by a boundary fence and maintained. He cannot remove the trees as they are protected by a TPO. He can maintain the land in a neat and tidy condition.

The use of precedent as a reason for refusal is not appropriate given that any similar proposals will fall to be assessed considering the relevant material planning considerations. The fact that one applicant has

gained permissions for a development does not, as the Courts have ruled on frequent occasions, infer that all similar proposals must be granted permission. To assume this is to undermine the very basis of the purpose and robustness of the planning system.

Policy Considerations

NPF4 Policy 14 supports development that is consistent with the six qualities of successful places, with a specific emphasis on health and wellbeing and creating safe and pleasant places. There can be no denying that the existing rear garden with its restricted area of amenity ground fails to deliver on these specific criteria. The existing garden is restricted and offers only limited amenity and private space. The extended area, owned by the applicants, provides a safe and pleasant place that enhances wellbeing and health. It should be supported based on the overarching objectives of NPF4 in seeking to encourage a healthier lifestyle and access to safe and pleasant places.

The ALDP, at Policy D2 seeks to ensure that the provision of amenity 'is adequate in relation to daylight, sunlight, noise, air quality and immediate outlook'. This proposal entirely accords with that objective, particularly when compared to the existing poor quality rear garden area.

Chapter 5 – Health and Wellbeing - of the ALDP is relevant. It confirms that 'health and wellbeing are key components of creating successful, sustainable places'. Policy WB1 seeks to ensure that developments provide healthy environments and promote physical and mental wellbeing. Having an area of private space as garden ground meets this overarching objective. To deny the applicants an improved rear garden area when the existing space is lacking and limited in scope, appears to ignore the Council's stated objective of delivering opportunities for improved health and wellbeing.

The Council's Householder Guidance at paragraph 2.12 provides scope to support the change of use land to garden ground when, as here, there is no adverse impact on the character of the area.

Summary

This request for Review is based on several material factors:

- the land is owned by the applicant
- the erection of the fence is permitted development
- no trees have been removed because of the proposed extended garden area
- all trees within the area are protected by a TPO
- the areas involved is very limited in the context of the wider woodland area and remaining land unaffected by the proposal
- the direct benefits to the applicant in securing a rear garden that provides amenity, and privacy must be balanced against the direct impact
- The direct impact of a small section of land to form garden ground (not for a built development) is limited and will not adversely affect the integrity or the contribution the woodland cover provides to the area.
- No other houses are impacted by the development proposed and no residents have objected
- The character of the area is not affected by the proposal given the extent of the remaining area retained
- There are no policy reasons to refuse the development proposed

- There is policy support both within the ALDP and NPF4 for a development of the scale proposed

The proposal involves the change of use of a small section of unmaintained land. The existing footpaths are unaffected by the proposal. No trees can or will be removed. The TPO provides the planning authority with the certainty of ensuring the longterm protection of the trees no matter under whose ownership they are.

The Review Body is respectfully requested to consider this Review on the balance of the positive benefits it delivers for the applicants against the small area of land that will become garden ground. As owners of the land, the applicants are entitled to maintain it and enclose it. The only issue here is whether it should be laid out more formally as garden ground. This is not designated public open space, it is not a park, and the planning authority has not sought, at any time, to recognise it as anything other than an area of undeveloped land within a designated residential area.

The proposal is a reasonable use of private land and will not erode the value of the wider area as an area of undeveloped woodland. The integrity of the woodland is not impacted.

The balance in favour of supporting the proposal is the benefit it delivers to the applicants who have had limited rear garden space due to a historical planning decision. No new development would be approved with such a limited rear garden area. It is not unreasonable for the applicants to seek an improved amenity area and address the shortcomings in their present situation.

For all these reasons and on the basis that the ALDP and NPF4 and Householder Guidance each lend support for the benefits this proposal will deliver for the applicants, the Review Body is respectfully requested to allow the appeal.

LIST OF PRODUCTIONS

1. Application form *
2. Decision Notice dated 14 March 2025*
3. Refused drawings*
4. ALDP Extract Policy WB1
5. ALDP Extract Policy D1
6. ALDP Extract Policy H1
7. ACC Householder Guidance – extract paragraph 2.1
8. Photographs
9. Plans – planning and building control

*denotes documents not provided as they are held on the planning casefile