



Strategic Place Planning

Report of Handling by Development Management Manager

Site Address:	36 Devonshire Road, Aberdeen, AB10 6XR
Application Description:	Installation of fence to front (retrospective)
Application Ref:	250433/DPP
Application Type:	Detailed Planning Permission
Application Date:	6 May 2025
Applicant:	Mrs Donna Ewen
Ward:	Hazlehead/Queen's Cross/Countesswells
Community Council:	Queen's Cross and Harlaw

DECISION

Refuse.

APPLICATION BACKGROUND

Site Description

The site comprises the front residential curtilage of an end-terrace ground floor flat on the north side of Devonshire Road. The road was feued in the late 19th and early 20th centuries and is largely laid out with granite terraces of dwellinghouses and self-contained one-up-one-down flats. The front curtilage is typical for the regular plan of the plots, with an approximate 7.1 metre setback from the public road to the south and a width of approximately 10.7 m. The associated flat is to the north of the front curtilage. To its west is the neighbouring front curtilage of 40 Devonshire Road, separated by a hedge and an access path serving the front door of the upper flat (38), and to the east is the neighbouring front curtilage of the ground floor flat at 34 Devonshire Road, separated by a hedge and the fence subject to this application, described in further detail below.

The area is residential in character and characterised by regular building setbacks from the public road, planted or low built boundary treatments, and an avenue of trees along both pavements. The site lies within the Albyn Place and Rubislaw Conservation Area.

Relevant Planning History

None.

APPLICATION DESCRIPTION

Description of Proposal

Retrospective planning permission is sought for the erection of a timber, horizontal panel fence along the length of the mutual boundary of the front curtilage with 34 Devonshire Road to the east, 7.06 m long and 1.70 m high. The fence is painted a light grey colour.

Amendments

There have been no formal amendments, however the applicant has advised that they are prepared to paint the fence a darker colour.

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=SVGWTZBZICO00>

- Supporting Statement

CONSULTATIONS

- **Queen's Cross and Harlaw Community Council** – No response received.

REPRESENTATIONS

Three representations have been received (one objection and two in support). In addition, one late representation in support has been received, all material considerations of which have been considered in the Evaluation. This does not affect the application's determination under delegated powers according to the Scheme of Delegation and the matters raised in timeous representations can be summarised as follows –

Material Considerations

Objection

1. The fence has an unacceptable effect on the streetscape, contrary to Policies H1 and D1 of the Aberdeen Local Development Plan 2023.
2. The fence would set a precedent for tall fences at the front of other properties.

Support

3. The fence improves the appearance of the street.
4. The fence's finish complements the surrounding granite.
5. The fence is in keeping with other boundary treatments on the street.

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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Section 149 of the Equality Act 2010 requires that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act, promote equality of opportunity for those with protected characteristics, and to foster good relations between persons who share a relevant protected characteristic and those who do not.

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 7 (Historic Assets and Places)
- Policy 14 (Design, Quality and Place)
- Policy 16 (Quality Homes)

Aberdeen Local Development Plan 2023

- Policy D1 (Quality Placemaking)
- Policy D6 (Historic Environment)
- Policy H1 (Residential Areas)

Aberdeen Planning Guidance

- Householder Development Guide

Other National Policy and Guidance

- Historic Environment Policy for Scotland
- Managing Change in the Historic Environment: Boundaries

Other Material Considerations

- Albyn Place and Rubislaw Conservation Area Character Appraisal and Management Plan

EVALUATION

Key Determining Factors

The key determining factors in the assessment of this application are whether the proposed development would:

- impact upon the character and appearance of the existing dwelling or the surrounding area;
- impact upon the amenity of the area, including the residential amenity of immediately neighbouring properties;

- preserve or enhance the character and appearance of the conservation area.

Policy Context

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; and*
- do not have a detrimental effect on the neighbouring properties in terms of physical impact, overshadowing or overlooking.*

The application site also lies within a Residential Area, as zoned in the Aberdeen Local Development Plan 2023 (ALDP) Proposals Map. 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:

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

Impact on the Character and Appearance of the Area, and the Historic Environment

In determining whether the proposed development would adversely affect the character and appearance of the existing dwelling, and the surrounding 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 application site also lies within the Albyn Place and Rubislaw Conservation Area. Historic Environment Policy for Scotland (HEPS), Policy 7 (Historic Assets and Places) of NPF4 and Policy D6 (Historic Environment) of the ALDP all seek to ensure that new development in conservation areas either preserves or enhances the character and appearance of the conservation area.

Historic Environment Scotland's guidance, Managing Change in the Historic Environment: Boundaries ('Boundaries') sets out that boundary treatments such as walls and fences are important elements which partially define the character of historic buildings and conservation areas. For the most part, Boundaries covers alterations and repairs to historic boundaries rather than new boundary features in historic contexts. However, it does state that an important consideration for boundaries is the impact of development in relation to the unified designs of streets and other groups of buildings. It further states that *"the continuity or uniformity of a boundary can characterise a whole street or area of the same period, style, historic development or original ownership"*. This consideration applies to the relatively uniform street context of the application site.

Site context

The Council's Householder Development Guide Aberdeen Planning Guidance (HDG) states: *"In all instances, the scale and form of boundary enclosures should be appropriate to their context and should not detract from the street scene as a result of inappropriate visual impact."*

The Albyn Place and Rubislaw Conservation Area Character Appraisal and Management Plan ('Character Appraisal') summarises the area's significance as one that *"embraces the Victorian development of the city, providing good examples of planned streetscapes; formal gardens and*

residential developments. The area is characterised by wide tree lined streets, which follow a linear and grid pattern. The majority are accompanied by low granite front garden walls". The property lies within Character Area C as identified in the Character Appraisal, where low granite walls to the front pavement are again identified as typical. The area is also identified as having *"a distinctive rhythm due to the symmetrical nature of the buildings, [and] the linear street pattern"*.

Devonshire Road typifies much of these elements as described in the Character Appraisal. Its regular terraced building types and setbacks, line of trees and limited number of boundary treatments contribute to a distinctive character and rhythm. Along almost the entire length of the street, the prevailing front boundary treatments are low granite boundary walls and railings (up to approximately 1.1 metres in height), or otherwise very low granite kerbs where historic railings have likely been removed, or hedges. The hedges are typically maintained to the same height as surrounding physical boundaries, although some grow higher.

Departing from this pattern, there is one instance, cited by the applicant in their Supporting Statement, of a black timber fence approximately 1.8 m high set against a hedge of equal height, in the front curtilage of 48 Devonshire Road. Planning permission would have been required for this fence although there is no record of an application having been received. Historic photography from Google Street View indicates that the fence has been in place since at least May 2014. It is therefore over four years old and hence immune from enforcement action. Although not part of the assessment of this application, the disruptive impact of this existing fence on the streetscape relative to the other boundary treatments is noticeable when approaching it from the east and vividly demonstrates the harm that is caused to the appearance of the street and to the character of the conservation area by inappropriate fences in front gardens.

The Supporting Statement avers that the bamboo structure which has supported the neighbouring hedge also constitutes a fence requiring permission. This is not a material consideration to the application as what is being assessed is the fence which has been erected at 36 Devonshire Road. For the avoidance of doubt, the bamboo and netting are gardening features which appear to serve to provide structure and support to the hedge, and do not constitute development requiring planning permission.

In relation to these hedge structures and the general maintenance of the hedge, the Supporting Statement advances the case that these have harmed visual amenity, which then the applicant has sought to address through the erection of the fence. This issue however relates to a civil matter between the parties who are concerned with the management of the boundary hedge, and it is not a material consideration to the planning application.

In summary, the fence that is subject of this application is different from the prevailing boundary treatments of the street in a way which is not explicitly supported by the Character Appraisal as typical for the conservation area. It therefore cannot be described as being "in keeping" with other boundary treatments as has been argued in a representation (*issue 5 in representations*). Nevertheless, as is acknowledged in particular by HEPS, change within historic environments is possible subject to it being carefully managed to protect the special character and appearance of historic sites such as the conservation area. The question to be addressed in the evaluation that follows is therefore whether the change that has taken place causes harm to that character and appearance.

Siting, Scale, Design and Materials

The siting of the fence along a mutual boundary is typical and acceptable. In the representations submitted to the application, there are divergent opinions as to whether the fence at the application property has a positive or negative impact on the character and appearance of the area in terms of its scale, design, and materials (*issues 1, 3 and 4*). With the exception of the nearby fence described

above which does not have planning permission but is exempt from enforcement action, the applicant's fence is higher than any other built front curtilage boundary on Devonshire Road, where the generally low-level built boundary treatments establish a distinctive rhythm between the public faces of properties. The numerous hedges on the street can and sometimes do grow higher. However, these hedges do not constitute development and are largely outwith the control of the planning authority. Furthermore, their physical character as vegetation softens their physical impact and increases the pleasant attributes of the surrounding place through natural enhancement.

The fence however is a hard-built and solid boundary treatment very different in character from hedging. The effect of its greater height is exacerbated by its construction in horizontal timber panels, which is alien to prevailing boundary treatments on the street, drawing attention to the fence and adversely disrupting the distinctive rhythm established by its select range of boundary treatments. While it has been argued in representations that the painting of the fence light grey matches with the colour of the granite dwellings (*issue 4*), the effect of the light shade only further draws attention to the fence and exacerbates its impact.

Given the character of the street and the surrounding conservation area set out in the Character Appraisal, the low built boundary treatments of the street make a significant contribution to its architectural interest and the place's distinctive character and appearance. The fence runs against this distinctive rhythm both in height, design and material, with no other comparable exceptions save for one which is lawful only because it is immune from enforcement. The fact that the fence is well maintained does not resolve this harm (*issue 8*). The fence therefore causes significant harm to the street's distinctive sense of place, its architectural interest and the character and appearance of the conservation area, contrary to Policies 7 and 14 of NPF4 and D1 and D6 of the ALDP, as well as HEPS.

Mitigation

The applicant has advised they would be open to painting the fence a darker colour, such as dark green or dark grey, towards mitigating the fence's visual impact. While this would improve the proposal, the contrast of the material with that of other boundaries on the street and its outstanding height would still adversely disrupt the rhythm of the streetscape described above, to the extent that the height would need to be reduced to a level comparable with the prevailing built boundary treatments. This would be approximately 460 millimetres, or three slats. The applicant has declined to make this change to height.

Precedent

Concerns have been raised in the representation objecting to the application that the proposal would set a precedent for similar tall fences to the front of other properties, further eroding the character and appearance of the surrounding area (*issue 2*). While each application is determined on its own merits according to its own site context, the cumulative erosion of place character through a process akin to precedent can occur in places where there is a regular and consistent built pattern. Devonshire Road has a consistent building type, building line setbacks, and most importantly a limited number of boundary treatment types. Given this regularity, it is difficult to envisage the material considerations on which the fence being assessed under this application could be approved, while a similarly specified fence along a front curtilage boundary elsewhere on the street could then be refused at a later date under the same statutory development plan. As such, approval of this proposal would threaten to introduce a process of cumulative harm to the architectural character and appearance of this part of the Albyn Place and Rubislaw Conservation Area, which would be difficult to prevent due to the street's relative uniformity.

Overdevelopment

Guidance on what constitutes “overdevelopment” is set out within ‘General Principles 4 and 5’ at section 2.2 of the Householder Development Guide. This states that the built footprint of a dwellinghouse, as extended, should not exceed twice that of the original dwelling and no more than 50% of the front or rear curtilage of a dwelling should be covered by development. The fence does not increase the dwelling’s built footprint and does not constitute overdevelopment.

Open Space

The householder development is wholly contained within the existing residential curtilage of the application property and no open space has been lost.

Summary

To summarise, the development is of an inappropriate scale, design and material for its context. It fails to preserve the character and appearance of the surrounding area, contrary to Policies 14 and 16 of NPF4 and Policies D1 and H1 of the ALDP, as well as the relevant guidance contained within the Householder Development Guide. The development also fails to preserve the character and appearance of the conservation area, contrary to HEPS, Policy 7 of NPF4 and Policy D6 of the ALDP.

Impact on the Residential Amenity of the Area

As well as visual amenity discussed above, residential amenity is considered. In relation to assessing impacts on residential amenity, the HDG states that: *"Proposals for boundary enclosures will not be permitted where they would result in an unacceptable impact upon the amenity of neighbouring dwellings."*

Privacy and Outlook

Privacy is given in the Supporting Statement as the main reason for setting the fence at its height of 1.7 m, and for declining requests to lower it to correspond with nearby walls and railings. As set out in the Supporting Statement, the fence has been put up in relation to the individual applicant’s own feeling of a loss of privacy, rather than because of any privacy issues arising from the front curtilage’s physical spatial context with the surrounding area. According to the Supporting Statement, and as corroborated by historic Google Street View photography, the established boundary treatment until the erection of the fence had been a hedge on both sides maintained at a height similar to nearby low boundary walls.

As such, and based on the context of the surrounding area, there is no especial expectation that the front curtilages of the dwellings, which face onto the street and have either planted or low built boundary treatments between them, should enjoy a greater level of privacy which would be afforded by higher boundary treatments such as is being applied for. The principle of residential privacy is dependent on context. The context for privacy is different between a dwelling’s rear curtilage surrounded by neighbouring private spaces and its front curtilage which faces onto the public road, as is the case here. In the context of the front curtilages, their residential amenity is promoted primarily by the clear demarcation between private and public space, rather than the securing of exclusive privacy between residential curtilages commensurate with a back garden.

It is therefore clear that the privacy issue which has been raised cannot be generalised to the physical spatial relationship of the application property with its surrounding context, which is what the fence is assessed against in this planning application. The proposal therefore cannot be said to promote the privacy of the residential property, which also has access to a larger and more private

garden area to the rear.

Regarding neighbouring properties, the fence does not cause any harm to the privacy, real or felt, of neighbouring properties, nor is it overbearing to the extent that it would significantly harm the outlook of any specific property. Rather, its visual harm as set out above would be on the character of the wider streetscape.

Daylight and Sunlight Receipt

The front curtilages are not the primary outdoor spaces exclusive to the dwellings, which have private garden areas to the rear. The front curtilages on both sides of the fence are large enough that it does not have any significant adverse overshadowing impact on either the application curtilage or its neighbour to the east.

Summary

To summarise, notwithstanding the harm to visual amenity, the development has no significant impact in relation to the residential amenity of the surrounding area, including the residential amenity of the neighbouring properties, in accordance with Policy 16 of NPF4 and Policy H1 of the ALDP, as well as the relevant guidance contained within the Householder Development Guide. The fence is not required in order to protect the privacy of property's occupants, given its position in the open and publicly visible front curtilage, and as there is a larger, more private garden area to the rear.

Public Sector Equality Duty

The Supporting Statement highlights the planning authority's public sector equality duty under the Equality Act 2010, as outlined in the Legislative Requirements above. This is in relation to a protected characteristic, disability of a person(s). As it applies to people with disabilities, which are protected under the 2010 Act, the planning authority, in exercising its functions, must have due regard to the elimination of discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act against people with disabilities, must advance equality of opportunity for people with disabilities, and foster good relations between people with disabilities and those without. This due regard does not override the legal responsibilities of the planning authority in exercising its planning functions. Particularly in this case is the planning authority's statutory duty under section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ('the Listed Buildings and Conservation Areas Act') to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

The Supporting Statement links the application directly to disability by stating that the privacy imparted by the fence supports the person(s)' management of their disability(ies).

As already discussed under 'Privacy and Outlook' above, the level of privacy to be expected from the front garden in its surrounding context is not sufficient to justify the height of the fence. Given that the application property has more private garden ground to the rear, the property overall does not suffer from a lack of private open space relative to its use as a ground floor flat.

It is therefore not clear how the fence specifically supports the enjoyment of the front garden towards managing any person's disability(ies) in a way that could not otherwise be achieved through development which preserved the character and appearance of the conservation area, not to mention use of the private garden ground to the rear. As such, there is insufficient weight to outweigh the planning authority's statutory duty under section 64 of the Listed Buildings and Conservation Areas Act. On considering this duty and then giving due regard to the public sector equality duty, the application cannot be supported on such a basis.

Regarding the right to respect for private and family life which the Supporting Statement refers to under the Article 8 of the Human Rights Act 1998, planning authorities are prohibited from acting in a way which is incompatible with Convention rights under the European Convention on Human Rights. Such rights are material considerations and are respected; however they are not guaranteed. These rights have to be balanced against all other material considerations when determining a planning application. The application is determined against the statutory development plan, which has been confirmed through its adoption process to be compliant with the Human Rights Act 1998.

Tackling the Climate and Nature Crises, Climate Mitigation and Adaptation

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 sited and designed to adapt to current and future risks from climate change.

The householder development is sufficiently small-scale such that it does not make any material difference to the global climate and nature crises, nor to climate mitigation and adaptation. The proposal is thus acceptable and does not conflict with the aims and requirements of Policies 1 and 2 of NPF4.

DECISION

Refuse.

REASON FOR DECISION

The fence is of an excessive height and alien design and materials for the context of the application site and the surrounding area. This adversely disrupts the regular and extensive rhythm of largely low boundary treatments in stone, metal railing or planted hedging that has been established on the street and which makes a significant contribution to its historic character and distinctive sense of place.

The development therefore fails to preserve the character and appearance of the surrounding area, contrary to Policy 16 (Quality Homes) of National Planning Framework 4 (NPF4) and Policy H1 (Residential Areas) of the Aberdeen Local Development Plan 2023 (ALDP). The proposed works are also be contrary to the relevant guidance set out in the Householder Development Guide Aberdeen Planning Guidance.

The fence harms the distinctiveness of the surrounding area and is therefore contrary to Policies 14 (Design Quality and Place) of NPF4 and D1 (Quality Placemaking) of the ALDP. The works would also fail to preserve the character and appearance of the conservation area, contrary to Historic Environment Policy for Scotland, Policy 7 (Historic Assets and Places) of NPF4 and Policy D6 (Historic Environment) of the ALDP.