

Planning Development Management Committee

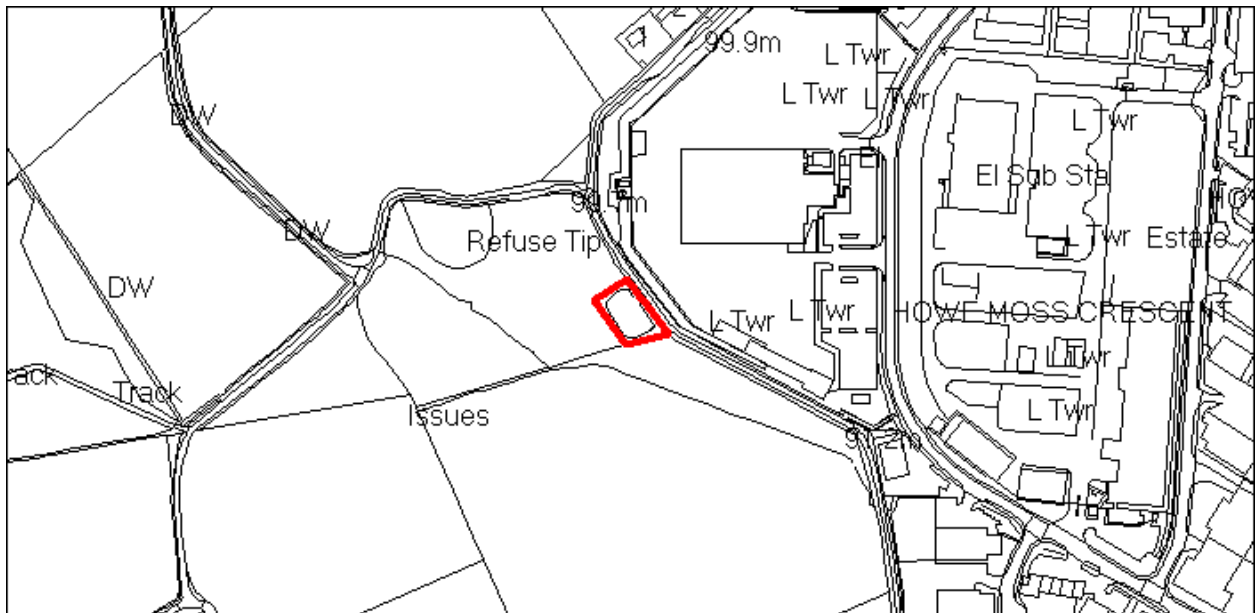
FORMER WATERWORKS, STANDING STONES, DYCE

PARTLY IN RETROSPECT: PROPOSED CHANGE OF USE TO ESTABLISH TWO PRIVATE PERMANENT GYPSY/TRAVELLER PITCHES (WITH PROVISION FOR 6 CARAVANS) AND ASSOCIATED ANCILLARY UNITS, SURFACING, FENCING, LANDSCAPING AND SITE SERVICING.

For: Mr George Stewart & Family

Application Type : Detailed Planning Permission
Application Ref. : P130119
Application Date: 28/01/2013
Officer: Robert Forbes
Ward : Dyce/Bucksburn/Danestone(B Crockett/G Lawrence/N MacGregor/G Samarai)

Advert : Dev. Plan Departure
Advertised on: 13/02/2013
Committee Date: 28 Novemner 2013
Community Council : No comments



RECOMMENDATION:

Approve subject to conditions

DESCRIPTION

This site lies around 1km to the west of Aberdeen Airport, immediately to the west of Kirkhill Industrial Estate. The site is situated on the opposite side of a private farm track which skirts the boundary with Halliburton's Don Facility.

The site is accessed via a farm track leading from Dyce Drive to the south-east, with access from the south-east corner. The plot is relatively level and enclosed by stone dykes approximately 2m high. It extends to some 1000 square meters and has been cleared of all pre-existing buildings and vegetation, reprofiled and surfaced with hardstanding. The applicant and his immediate family currently reside at the site in a mobile home.

To the west of the site is an area of established deciduous woodland to the north-east of the site, beyond the narrow farm track, lie industrial premises, including associated open storage yards. To the south are agricultural fields.

RELEVANT HISTORY

In 2006, retrospective planning permission (ref. A5/1686) was granted on appeal for the formation of 5 gypsy / traveller pitches on land at Pitmedden Road, Dyce, some 2km to the north-east. Planning permission had previously been refused by Committee on the basis of contravention of green belt policy. Notwithstanding the proximity of the site to Aberdeen Airport runway and industrial uses, noise conflict was not cited as a reason for refusal. The reporter considered that the development is a use which may be premitted in the green belt, although contrary to both structure plan and local plan green belt policy.

The current application site was formerly used as water pumping station, however it was cleared of buildings and structures in 2008.

Planning permission for the erection of a single detached house on the site (ref 101078) was refused by Committee in November 2010. The reasons for refusal were: contravention of green belt policy, and the close proximity of the house to existing industrial uses, with consequent potential conflict of use and prejudice to future industrial activity. A subsequent appeal against the refusal was made and was dismissed in March 2011

The Reporter found that the proposal was at odds with green belt policy, which restricts development only in particular circumstances. Concern was also raised in terms of: drainage, due to the intention to use a private sewer system close to the settlement boundary; and the poor quality of access to the site. He considered the potential residential environment to be poor, and that background noise levels were remarkably high. Additionally the long established industrial businesses required to be protected and that the planning system should guard against such conflicts of use.

The Reporter concluded that there were no site specific matters which would justify making an exception to the development plan, particularly green belt policy. Furthermore there was no way that planning conditions could moderate any of the difficulties identified or alter the physical context of the site.

The current applicant subsequently purchased the site and with his family has resided at the site, on an unauthorised basis, since around October 2012.

PROPOSAL

This is a partly retrospective application, as the use has commenced and physical development has taken place. It seeks detailed planning permission for the change of use and redevelopment of the site to create two permanent gypsy/traveller pitches, and ancillary development (e.g. formation of hardstanding / fences / gates and services). One pitch has been created and occupied since October 2012, comprising one large mobile home (principal / chalet caravan) and two ancillary touring caravans. A permanent toilet block has yet to be developed, with a temporary building having been placed on site.

Supporting Documents

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at - <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?130119>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

REASON FOR REFERRAL TO COMMITTEE

The application has been referred to the the Planning Development Management Committee because the Scottish Environment Protection Agency (SEPA) have objected to the application. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

CONSULTATIONS

Housing Strategy – No objection. The development would alleviate pressure on current gypsy/traveller provision and is welcomed. If the occupants were evicted, they could present as being homeless, putting pressure on the Council's waiting list;

Roads Projects Team - Adequate parking is proposed. Concern is raised with the inaccessibility of the site by public transport and lack of pedestrian footways. Adequate visibility should be provided on the private track.

Environmental Health – No objection in principle. Raise concerns regarding foul sewerage arrangements and noise. In relation to noise it was concluded that those currently living on-site are unlikely to object to noise levels in the locality, reflective of the fact they have chosen this location and have been living there for some time – without complaint. Request that a condition be imposed regarding storage of gas cansiters on site;

Enterprise, Planning & Infrastructure (Flooding) - No observations;

Scottish Environment Protection Agency - Object to the in principle on the grounds that private foul drainage proposals do not comply with SEPA policy and guidance for new developments within or close to settlement boundaries. Such proposals should connect to the public sewerage system.

Community Council – No response received.

Aberdeen Airport – The proposal does not conflict with airport safeguarding criteria.

REPRESENTATIONS

Two letters of objection have been received from nearby residents. The objections raised relate to the following matters:-

Contrary to policy; neighbour notification procedures are inadequate; adverse environmental / amenity / visual / traffic and road safety impacts; incompatibility with adjacent agricultural and industrial / commercial uses; lack of need for such accommodation; inadequate services; concerns regarding personal safety (i.e. possible use of firearms / criminal activity); concerns regarding unauthorised works on the site / adjacent land; and need to have regard to previous appeal decision.

The agent has submitted a detailed supporting statement which attempts to justify the rationale for the development (see supporting documents above).

PLANNING POLICY

National Policy and Guidance

Scottish Planning Policy (SPP) seeks to promote appropriate development, particularly within existing settlements. It seeks high quality development that is sympathetic to its setting and takes into consideration amenity.

SPP (Green Belts) states that the key objectives of green belt policy are – to direct planned growth to the most appropriate locations and support regeneration; to protect and enhance the quality, character, landscape setting and identity of town and cities; and to protect and give access to open space within and around towns. Where a proposal would not normally be consistent with green belt policy, it may still be considered appropriate either as a national priority or to meet an established need if no other suitable site is available. Development in a designated green belt should be of a high design quality and a suitable scale and form.

SPP (Other Housing Requirements) Development plans should address the housing needs Gypsies and Travellers, who have specific housing needs, often requiring sites for caravans and mobile homes. This need for appropriate accommodation should be considered through housing needs and demand assessments and local housing strategy. Given the typically transitory nature of Gypsies and Travellers, provision should be made for both communities which are in an area already and those who may arrive at a later date. Planning authorities should identify suitable locations for meeting the needs of Gypsies and Travellers and set out policies relating to small privately owned sites.

Aberdeen City and Shire Structure Plan provides a spatial, rather than detailed, strategy to ensure the right development is promoted in the right place. It has the objective of securing sustainable economic growth, by enabling development which is of high quality, protects valued resources and assets, including the built and natural environment, and which is easily accessible.

Aberdeen Local Development Plan

Gypsies and Travellers

Identifies Gypsies and Travellers as a distinct ethnic group and that the lack of suitable, secure accommodation underpins many of the inequalities this community experiences, often leading to the use of public and private land as unauthorised encampments. Establishing new permanent and transit sites can help to alleviate these conflicts.

In January 2008, Craigforth Consultancy & Research was commissioned by Aberdeen City, Aberdeenshire and Moray Councils to carry out an 'Accommodation Needs Assessment' for Gypsies and Travellers in the Grampian area. For Aberdeen the report recommended a reduction in the size of the existing site at Clinterty and the development of another smaller site. In addition, it recommended the development of 1-2 small informal sites, and the provision of privately developed sites. Policy H6 and H7 and Supplementary Guidance seek to deliver new permanent or transit sites solely for the use of Gypsies and Travellers.

The five +1,500 house Masterplan Zones associated to Policy H7 are each expected to contribute towards the provision of Gypsies and Travellers. Of these five, three have are considered most appropriate for on-site provision. The three preferred sites offer opportunities for sites to be distributed to the north, west and south of the City, thereby offering a choice of locations. Where on-site provision is not made, a financial contribution will be required.

Policy H6 (Gypsy and Traveller Caravan Sites) requires that such proposals provide a suitable residential environment of a similar standard as mainstream housing developments. Applications for permanent or transit sites will be supported in principle if:

1. Access to local services and schools can be provided;
2. The development can be made compatible with the character and appearance of the surrounding area;
3. The development makes provision for essential infrastructure such as water, sewage disposal and electricity. Provision of electricity and heat through sustainable means will be encouraged; and
4. It can be demonstrated that the site will be properly managed.

Policy NE6 (Flooding and Drainage) – Surface water drainage and disposal associated with development must be dealt with in a sustainable manner,,avoid flooding and pollution both during and after construction. Connection to the public sewer will be a pre-requisite of all significant development. Private wastewater treatment systems in sewered areas will not be permitted. In areas not served by the public sewer, private sewage treatment systems for individual properties will be permitted provided the developer demonstrates that there will be no adverse effects on the environment, amenity and public health.

Policy NE2 (Green Belt) – No development will be permitted in the green belt for purposes other than those essential for agriculture, woodland and forestry, recreation uses compatible with an agricultural or natural setting, mineral extraction, restoration or landscape renewal.

Policy D3 (Sustainable and Active Travel) – New development shall minimise travel by private car, improve access to services and promote healthy lifestyles by encouraging active travel.

Policy D6 (Landscape) –Development will not be acceptable unless it avoids:

1. significantly adversely affecting landscape character;
2. obstructing important views of the City's townscape, landmarks and features from prime vantage points;
3. disturbance, loss or damage to important recreation, wildlife or woodland resources or the physical links between;
4. sprawling onto important or necessary green spaces or buffers between places or communities, and those which provide opportunities for countryside activities.

Development should avoid significant adverse impacts upon existing landscape elements, including linear and boundary features or other components, which contribute to local amenity, and provide opportunities for conserving, restoring or enhancing them.

Policy BI4 (Aberdeen Airport) – Due regard will be paid to the safety, amenity impacts on and efficiency of uses in the vicinity of the Airport.

Policy T2 (Managing the Transport Impact of Development) – New developments shall demonstrate that sufficient measures have been taken to minimise the traffic generated.

Supplementary Guidance

Gypsy and Traveller Sites (January 2013) -

Accepts there is a national shortage of authorised sites for Gypsies and Travellers and this has created tensions between Gypsies and Travellers and the settled community. The supply of authorised sites, in appropriate locations, will help address this and balance the needs of the Gypsies/ Travellers with those of the local settled community and businesses. Overall the successful delivery of Gypsy and Traveller Sites through the Local Development Plan is a key priority.

The development of sites for Gypsies and Travellers will be assessed in the same way as applications for the settled community. There is no requirement to justify demand, but the site must be suitable in planning terms, which are listed as criteria. In addition other relevant policies must apply. For clarification there will be no exception for the development of sites for Gypsies and Travellers in the Greenbelt.

Sites should not be identified for Gypsy and Traveller use in locations that are inappropriate for ordinary residential dwellings, unless exceptional circumstances apply.

Other Relevant Material Considerations

Planning appeal decisions on this site and at Pitmedden Road, as referred to above.

ACC Housing / Environment (6/10/2009) – Agreed policy on Gypsy / Traveller pitch accommodation supply.

ACC Local Housing Strategy 2012-2017 - This identifies no specific sites for permanent Gypsy / Traveller Sites but recognises that there is a legitimate housing need.

Equal Opportunities / Human Rights legislation / Policy.

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, regard is to be had to the provisions of the development plan and that determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

Principle

The proposal is consistent with the objectives of the Council's strategic policy position regarding gypsy / traveller accommodation, which recognises "the need to provide smaller permanent sites to accommodate individual extended Gypsy / Traveller families" and "to help Gypsies / Travellers to develop sites owned by themselves". This is reinforced by the Local Housing Strategy and shows an unmet need, which is recognised by the Council. The compatibility of the proposal with the SPP and Structure Plan objective of sustainable economic growth requires detailed assessment, see below. The proposal is consistent with the objectives of local plan paragraphs 3.48 and 3.49 and the aims of the related SPG regarding Gypsy and Traveller sites, approved January 2013. However, the SPG does not support development of sites within the green belt, this conflict is addressed below. Local Plan policy H6 supports development of suitable sites subject to a number of criteria, which are considered below. As sites for provision identified within the Local Plan, in accordance with policy H7, have yet to be developed, no new provision has been made available. This is considered to be a significant factor which weighs in favour of the proposal.

Green Belt Policy

Policy NE2 (Green Belt) of the Aberdeen Local Development Plan (ALDP) restricts new development in the green belt to proposals essential for agriculture, forestry, recreation, mineral extraction or restoration or renewal purposes and makes no mention of Gypsy / Traveller sites. This conflicts with SPP (Green Belts) which potentially allows for other non compliant uses, subject to need and unavailability of other sites. Both these tests are met in this case. Therefore the proposal complies with the principles set out in national such policy. Furthermore, the proposal is supported by the 2006 appeal decision at Kirkton Villa.

The proposed use is considered legitimate and should be addressed through the planning process. Neither the adopted local plan, nor the approved structure plan identify specific sites, other than within major housing release areas, which have yet to be delivered. Taking a reasonable approach, it is therefore considered that need and availability of suitable sites are material considerations when considering any conflict with policy NE2.

Environmental / Landscape Impact

The proposal is of modest scale and considered to have limited physical / landscape impact, due to the secluded location, the existing boundary walls and adjacent woodland. In contrast to the adjacent woodland, the site itself is not designated as 'green space network' nor as an area of wildlife or ecological interest. Subject to provision of supplementary soft landscaping / trees within the site, in order to better integrate the development with the rural character of the green belt, it is considered that there would be no significant adverse landscape impact or conflict with the objectives of local plan policies D6, H6, and NE2.

The adopted local plan defines brownfield as 'land which has been previously developed', which is the case here, thus a more acceptable option than alternative undeveloped sites within the green belt.

Access / Parking

The site is situated 630m along an unlit private track which leads to several cottages and farms. There is no pavement or segregated pedestrian facility. Although it is unlikely that people would walk to / from the site due to its location and distance from other residential areas or community services, given the low volume of traffic using the existing track, there is no fundamental safety objection on pedestrian access / safety grounds. It should be noted that there is access to Howe Moss Crescent via a path which leads from the track and is situated 125m from the site. The closest bus stops are located on Howe Moss Crescent and Avenue approximately 450m away, which are serviced by the no.80 (Dyce Airlink) and no.27 (City Centre – Kirkhill) routes.

On sites outwith the urban area, sustainable access and adequate non-car accessibility will usually be poor. Although this is at odds with the objectives of Local Plan policies D3 and T2, policy H6 only requires that access to local services and schools can be provided and does not make specific reference to sustainable transport modes. Notwithstanding the tension with policies D3 and T2, policy H6 generally accepts such development.

Given the nature of the proposal and that other sites identified / to be delivered through the LDP are also likely to be at the urban fringe, transport policy is not considered to be the main determining issue and would not be a sufficient reason for refusal. The site is of adequate size that sufficient car parking can be provided without any obstruction of the access track or pressure for parking on public roads.

Residential Amenity

A noise impact assessment was previously submitted in relation to the refused house (Ref: 101078). This concluded that residents would be adversely affected by noise generated from helicopter traffic and industrial activities at Kirkhill Industrial Estate. Daytime noise levels were generally within the relevant British Standards (BS4142 - Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas and BS8233 – Sound Insulation and Noise Reduction for Buildings) limit of 55dB). Although occasional peaks associated to the testing of equipment within the adjacent yard were experienced; however this is infrequent and dependent on the source location. Residents of a nearby cottage described noise in the area as 'noticeable but not offensive'.

Given the nature of the current proposal, it is unlikely that an equivalent level of noise attenuation is provided by the existing or proposed habitable structures on site, given their less robust construction to that of a house.

As no specific noise assessment has been submitted in relation to the current proposals, it remains questionable if a suitable level of noise attenuation is likely to be achieved for the proposed use. The current proposal is therefore potentially at risk of being affected by noise nuisance. Although whether it is reasonable to apply less onerous noise attenuation standards for the proposed use than for a mainstream house, as suggested by the agent, is a matter of judgement. It also implies that gypsy/ travellers are more tolerant of noise intrusion than members of the settled community, despite no physiological / empirical evidence for such a claim having been presented. Such an approach is also at odds with the expectations of local plan policy H6, which does not discriminate between mainstream housing and gypsy / travellers.

It is recognised that the level of amenity experienced by residents of the site may not be particularly high, but is comparable with levels experienced in other residential locations. Setting aside the issue of noise, the rather secluded site location and the proximity of adjacent woodland are considered to be positive factors in terms of general levels experienced by its occupants. It is therefore considered that, in this case, an acceptable level of amenity would be provided.

Conflict of Uses

This was identified as a significant issue in the consideration of the 2010 house proposal. The Council's SPG states that "Sites should not be identified for Gypsy and Traveller use in locations that are inappropriate for ordinary residential dwellings, unless exceptional circumstances apply." It is considered that the identified need and unavailability of alternative sites constitutes exceptional circumstances.

Whilst noise may appear to be acceptable, operational changes could take place and alter the pattern or level of noise experienced in the future, inclusive of night time working. This has the potential to affect the amenity of residents. Should complaints be received, this could result in legitimate operations within the adjacent industrial site being compromised and this is considered a negative consequence of the proposal and would conflict with economic development objectives.

Notwithstanding this potential conflict, it is noted that the Council's noise team, who would be responsible for investigating any future noise complaints, have no objection to the proposal. Furthermore, no objection has been received from the adjacent industrial occupiers. It is also noted that the applicants have been on site for over one year and there is no record of noise complaints within that time.

Whilst the agent has suggested use of a condition / legal agreement to restrict the rights of the occupants of the site to complain in relation to noise and to restrict the occupancy, it is not considered that such a condition or legal agreement would be appropriate, and could unfairly discriminate in conflict with human rights legislation and para. 2.6 of the SPG. Furthermore, the applicant seeks flexibility to allow the site to be occupied in the future by non-family members.

Drainage

It is proposed to use a private waste water system via a septic tank discharging to a soakaway within the site. SEPA have objected to this private arrangement, as a public connection could be made and that sporadic and / or incremental use of private treatment plants around the edge of main settlements would lead to a long-term failure to maintain or replace assets resulting in environmental harm and public health risks. However, given the scale of development it is considered that it is not considered feasible / proportionate to extend the public sewer from Howe Moss Crescent

A suitable private system could be implemented, although the EHO has questioned if the provision of a soakaway within the site is suitable they do not object to the proposal. Furthermore, a drainage recommendation report provided by the applicant states that a soakaway will be effective and does not pose a risk to groundwater or local water supplies. Policy NE6 allows for private systems outwith the public sewered area and only requires significant development to connect to the public sewer. The proposal is not considered to represent a significant development. Surface water drainage would also be discharged via the soakaway which is acceptable and complies with Policy NE6.

Notwithstanding the SEPA objection, as this does not relate specifically to the matter of flood risk, there is no requirement to refer this application to the Scottish Ministers for scrutiny.

Objectors' concern / other matters

In addition to the matters discussed above, adequate statutory neighbour notification and advertisement of the application has taken place. The conjecture regarding possible criminal activity and use of firearms is not supported by any evidence and would be potentially discriminatory and inappropriate to give such concerns any weight in determining this application. Whilst it is unfortunate that the applicant has occupied the site without having secured the necessary planning permission, it is recognised that they have legitimate accommodation needs and the failure of the local plan to identify available sites for permanent pitches may be a significant contributory factor in such action. It must be emphasised that the application requires to be considered on its individual merits and the fact that it is partially retrospective does not constitute legitimate grounds for refusal. Although the applicant has admitted that unauthorised works have taken place, to provide water and electricity supplies, these works are not subject of this planning application. Safety concerns regarding storage of gas canisters is a matter can be controlled by other legislation.

Other issues raised by the agent, including: human rights and equal opportunities; and other appeal decisions for similar proposals outwith Aberdeen, are considered to weigh in favour of the proposal.

Given the limited level of representation received, it is not considered necessary or appropriate to hold a public hearing in this case.

Conclusion

Notwithstanding the tension with: local plan policies NE2, D3 and T2; the SPG regarding Gypsy / Travellers; and the SEPA objection, the special nature of the

use and the other material considerations are such that, subject to imposition of conditions, the proposal is considered acceptable in terms of SPP, the Structure Plan and specific ALDP policy relating to gypsy / traveller sites.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

Notwithstanding the tension with local plan policies NE2, D3 and T2, the SPG regarding Gypsy / Travellers and the SEPA objection, the special nature of the use and the other material considerations are such that, subject to imposition of conditions, the proposal is considered acceptable in terms of SPP, the Structure Plan and specific local plan policy relating to gypsy / traveller sites.

CONDITIONS

it is recommended that approval is granted subject to the following conditions:-

(1) that within three months of the date of this approval, a scheme of all surface water drainage works designed to meet the requirements of Sustainable Urban Drainage Systems shall be submitted to and approved in writing by Aberdeen City Council as Planning Authority. Within three months of such approval the said scheme shall have been implemented and become operational. Failure to have met these requirements shall invalidate the occupancy of the site for residential purposes and any such use should cease forthwith - in order to safeguard water qualities in adjacent watercourses and to ensure that the development can be adequately drained.

(2) that within three months of the date of this approval, a further detailed scheme of site and plot boundary enclosures and a programme of future maintenance, including retention of the existing granite boundary walls, shall be submitted to and approved in writing by Aberdeen City Council as Planning Authority. Within three months of such approval the said scheme shall have been fully implemented. Failure to have met this requirement shall invalidate the occupancy of the site for residential purposes and any such use should cease forthwith - in order to preserve the amenity of the neighbourhood and to ensure adequate visibility at the site entrance.

(3) that within three months of the date of this approval, a scheme for the provision of foul sewerage and wholesome water facilities, shall be submitted to and approved in writing by Aberdeen City Council as Planning Authority. Within three months of such approval the said scheme shall have been fully implemented. Failure to have met this requirement shall invalidate the occupancy of the site for residential purposes and any such use should cease forthwith - in the interests of public health.

(4) that within three months of the date of this approval, a further detailed scheme of landscaping for the site, which shall include indications of all existing trees and landscaped areas on the site, and details of any to be retained,

together with measures for their protection in the course of development, and all proposed areas of tree/shrub planting including details of numbers, densities, locations, species, sizes and stage of maturity at planting, shall be submitted to and approved in writing by Aberdeen City Council as Planning Authority. Such approved scheme shall be fully implemented during the first available planting season following the completion of the development and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a size and species similar to those originally required to be planted, or in accordance with such other scheme as may be submitted to and approved in writing for the purpose by the planning authority - in the interests of the amenity of the area..

Dr Margaret Bochel

Head of Planning and Sustainable Development.