



SOLICITORS
AND ESTATE AGENTS

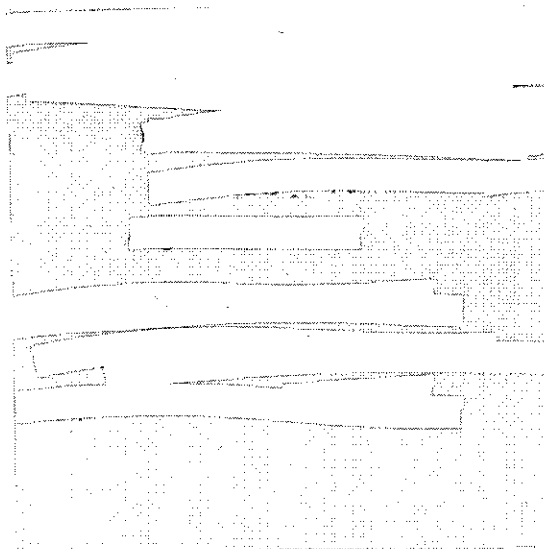
1 East Craibstone Street
Aberdeen AB11 6YQ

Tel: 01224 581581
Fax: 01224 580119

DX AB43 Aberdeen
LP-33 Aberdeen 1

www.jgcollie.co.uk

Development Management Team
Enterprise, Planning & Infrastructure
Aberdeen City Council
Business Hub 4
Marischal College
Broad Street
ABERDEEN
AB10 1AB



Our Ref: RC.AD.ZZZ999.23
Your Ref: SMO/RWK/17015.0034
Date: 8 October 2015

Dear Sirs

Richard McDonald
Demolition of Existing Dwellinghouse and Erection of 3 No. Dwellinghouses Land at Brookfield, Murtle Den Road, Milltimber, Aberdeen AB13 0HS
Planning Ref: 151376

We act on behalf of Richard McDonald.

Our client has copied us in on the letter of objection lodged by Messrs. Ledingham Chalmers on behalf of the Trustees to the Managers of the Widows Fund of the Seven Incorporated Trades of Aberdeen (hereinafter referred to as "The Seven Incorporated Trades"), dated 17 September 2015.

Prior to addressing the various points raised in Messrs. Ledingham Chalmers' aforementioned letter, we would comment as follows.

It should be recognised that whilst our client's site lies within the Green Belt, the site has already been developed by the erection of Brookfield itself.

With regard to our client's application, regard should be had to the topography of the site along with its existing boundary features and the proposed new layout of the same.

The site is surrounded, on all four sides, by mature trees which are in excess of 15 metres in height. The foundations of the three dwellinghouses will be built significantly below the level of Murtle Den Road.

The three dwellinghouses will only be visible from the top of the existing driveway, which will be retained, where it abuts Murtle Den Road. None of the three dwellinghouses, as is the present position with Brookfield, shall be visible to any of the other existing, or proposed, new frontagers of Murtle Den Road. It should also be noted that, under delegated powers,

Anthony J Dawson and Janet Hood are accredited by The Law Society of Scotland as specialists in Liquor Licensing Law
Graham A Garden is accredited by The Law Society of Scotland as a Family Law Mediator. He and Susan Waters are trained as Collaborative Family Lawyers

James & George Collie and Kinnear & Falconer are trading names of James & George Collie LLP a Limited Liability Partnership registered in Scotland under number SO304786 and having its registered office at 1 East Craibstone Street, Aberdeen AB11 6YQ

Members

- Anthony J Dawson
- Philip G Dawson
- John W Sinclair
- Graham A Garden
- Duncan M Love
- Forbes F McLennan
- Gregor F Sim
- Richard D M Shepherd
- Innes R Miller
- Anne-Marie Churchill
- Brian Sutton

Consultants

- Li: J W Mackinnon
- Rory Cradock
- Janet Hood
- Ignacio Chanza

Senior Solicitors

- Valienne M Bruce
- Susan Waters
- Caren McNeil
- Mark W Allan
- Kate Mitchell

Partnership Accountant

- Watson Hutch CA

Stonehaven Branch

- 20 Ann Street
- Stonehaven AB39 2EN
- Tel: 01569 763555
- Fax: 01569 766548
- law@kinnearandfalconer.co.uk

Property Sales Shop

- 450 Union Street
- Aberdeen AB10 1TR
- Tel: 01224 572777
- property@jgcollie.co.uk

Property Leasing

- 30 Bon Accord Street
- Aberdeen AB11 6EL
- Tel: 01224 583338
- leasing@jgcollie.co.uk

Aberdeen City Council granted planning application number 131419 for the erection of a new three storey dwellinghouse at Pinelands, Murtle Den Road on 4 July 2014.

In the case of the Pinelands application, a new entrance was created onto Murtle Den Road.

It should be noted that our client's application envisages retaining the existing single access to Brookfield which will serve all three new dwellinghouses.

Turning now to Messrs. Ledingham Chalmer's letter of objection and following their numbering, we would respond as follows:-

1. Green Belt

1.1 Accepted.

1.1.1 Our client's proposal does not breach Policy NE1 – Green Space Network. There is no wildlife, recreational, landscape and access value to be protected, promoted or enhanced. Our client's proposals will not destroy or erode the character or function of the Green Space Network.

1.1.2 Policy NE2 – Green Belt.

We would contend that our client's proposals meet the permitted exceptions, namely, that:-

- (a) the Development is within the boundary of the existing activity;
- (b) the Development is small scale;
- (c) the intensity of activity is not significantly increased; and
- (d) the proposed built construction is ancillary to what exists.

1.2

1.2.1 The Development is clearly within the boundary of the existing activity, a fact accepted by The Seven Incorporated Trades. Although not relevant to this particular exception, the proposed Development of three houses should be regarded as low density.

1.2.2 The proposed Development is small scale in comparison to the surrounding area. Due to the boundary features and topography, there will be no loss of privacy to the proposed development. As stated above, the Council have already granted planning permission in respect of Pinelands.

1.2.3 The erection of two additional dwellinghouses will not lead to a significant increase in the intensity of activity. Again due the boundary features and topography, an increase in noise, if any, would be very minimal but, nonetheless, would not impact upon any of the existing, or proposed, new frontagers.

1.2.4 Aberdeen City Council would appear to have accepted that this exception has been met by their granting of planning application 131419 in respect of Pinelands.

1.3 We would contend that it is irrelevant to compare the size of the current application site with that contained in P141260. What is relevant is whether three houses would constitute an over-development of our client's site. As opined above, our client's proposal would not constitute an over-development.

1.4 Noted.

2. Character of Murtle Den Road

2.1 The character of Murtle Den Road will not be affected, or compromised, by our client's proposed development.

2.2 Our client's proposed development does not deviate from Aberdeen Local Development Plan Policy D1.

2.3 The proposed development will not detract from the character of Murtle Den Road. The three houses will be situated far enough away from each other so that there will be no adverse impact in relation to privacy, amenity, or over-shadowing. To ensure adequate privacy, a separation distance of at least 18 metres will exist between windows and the common property boundary. Each of the houses will have no more than 33% of their total curtilage area built upon, and each of the rear gardens will be at least 9 metres in length.

Our client's proposed development will not set a precedent for infill housing.

However, a precedent for further development on properties bordering Murtle Den Road has already been set by the grant of planning consent for Pinelands.

3. Development not Capable of Implementation

3.1 We would respectfully contend that any potential title issues are not the concern of Aberdeen City Council.

3.2 See 3.1 above.

3.3 See 3.1 above.

3.4 See 3.1 above. Utility providers have statutory rights of access.

3.5 Any negative or suspensive conditions are a matter between the applicant and the Council and, as such, should be of no concern to The Seven Incorporated Trades.

3.6 With respect, *Cook -v- Cadman* 2014 S.L.T. (Lands Tribunal) 13 supports the view that the restrictions on development constitute a neighbourhood burden which neighbouring proprietors, "might" have title to enforce. It does not support the view that neighbouring proprietors have an absolute entitlement to enforce.

In Cook -v- Cadman, it was opined that "the case in favour of the owners of the three houses in Deeview Road South, Cults, keeping any benefit of the 1876 burdens over the plot (being the plot proposed for development), substantially screened by trees, etc., does not begin to get off the ground on a test of reasonableness. The impact on those three houses of likely development at the subjects, appeared to the Tribunal to be minimal or less.

Our client's proposed development will create minimal or no visual intrusion and no substantial views will be lost by the construction of the three dwellinghouses.

4. Capacity of Murtle Den Road

4.1 The Seven Incorporated Trades intend to bring Murtle Den Road up to adoptable standard,

It may well be that Aberdeen City Council will formally adopt Murtle Den Road at some point in the future.

4.2 See 4.1 above.

4.3 As it is The Seven Incorporated Trades' intention to bring Murtle Den Road up to adoptable standard, it would not be equitable for our client to require to contribute to the cost of any improvements already identified, and no doubt budgeted for, prior to the submission of our client's application.

It is believed that no similar contributions were sought in respect of Application Reference 131419 for Pinelands.

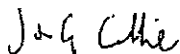
5. Conclusion

5.1 The approach of The Seven Incorporated Trades with regard to the proposed development along the length of Murtle Den Road is inconsistent and their objections to our client's proposed development should not be given sufficient weight as to lead to the refusal of our client's application.

5.2 It should be noted that the only objection lodged to our client's application is from The Seven Incorporated Trades and that there are no Notices of Objection from any other other existing frontagers to Murtle Den Road.

We would respectfully ask that the above mentioned facts and circumstances are taken into account when considering our client's application.

Yours faithfully



James & George Collie