

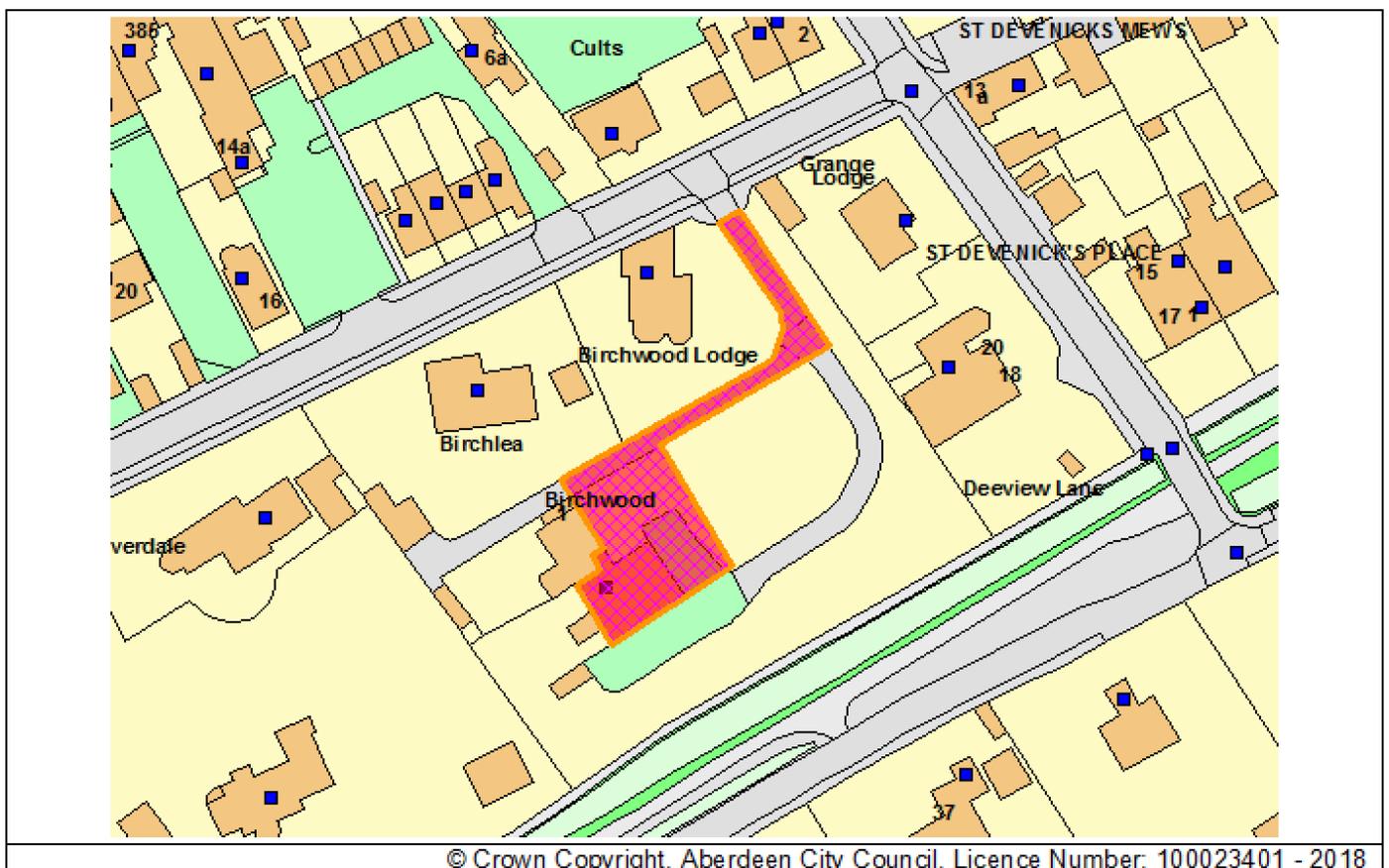


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 3 November 2022

Site Address:	Birchwood House Upper Flat, 1 South Avenue, Aberdeen, AB15 9LP
Application Description:	Resurfacing of external amenity area to form parking/turning area (retrospective)
Application Ref:	221070/DPP
Application Type	Detailed Planning Permission
Application Date:	29 August 2022
Applicant:	Mr Stuart Spearritt
Ward:	Lower Deeside
Community Council:	Cults, Bieldside and Milltimber
Case Officer:	Jemma Tasker



RECOMMENDATION

Refuse.

APPLICATION BACKGROUND

Site Description

The site is located on the south side of South Avenue. The application site itself extends approximately 805sqm and is accessed by a driveway to the north, which is shared with properties to the north. The site contains many mature trees of varying species which are covered by Tree Preservation Order 157 (South Avenue). The wider site is bound to the north, east and west by residential properties and to the south by a band of mature planting and the Deeside Way beyond. The immediate surrounding area, particularly along the south side of the street, is characterised by large, detached houses often of substantial size and frequently set within large, tree covered gardens.

The site is occupied by a large, traditional, detached dwellinghouse of granite construction, divided into three flats, with the applicant occupying the section referred to as 'Upper Birchwood' and two other properties occupying the ground floor. The section of the application site to which this application relates is an area of hardstanding to the east of the building, predominantly denoted on the existing site plan as 'patio (slabs)'. The building and gardens are not readily visible from a public viewpoint.

Relevant Planning History

Application Number	Proposal	Decision Date
211031/DPP	Erection of garden room/office, erection of pergola and formation of decking to rear	22.10.2021 Status: Withdrawn by Applicant.
220410/DPP	Resurfacing of external amenity area to form parking/turning area (retrospective)	15.08.2022 Status: Withdrawn by Applicant.

APPLICATION DESCRIPTION

Description of Proposal

Detailed planning permission is sought retrospectively for the resurfacing of an external amenity area to form a parking/turning area. An area of tar, 3.7 metres in width and 7.5 metres long, plus 2.7 metres for the bellmouth, has been laid to the east of the building, which is bordered by a 200mm granite set margin. To the south-east and south-west of this area, slabs have been laid to form a pathway.

It is noted that an electric vehicle charging point has been installed on the north elevation of the building – to the south of the new tarred area – however, this is considered to constitute permitted development and thus, does not require planning permission. Additionally, a 1.96 metre high fence has been constructed around three sides of the parking space, at a distance of 1.2 metres from the windows of the ground floor flat to the west – which is in separate ownership – and along part of the lawn. Again, this is considered to constitute permitted development and thus, does not require planning permission.

Amendments

None.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RHDFS5BZJ6900>

Retrospective Arboricultural Impact Assessment Rev A by Urban-Arb Arboricultural Consultants (August 2022)

Supporting Statement by McWilliam Lippe Architects (August 2022)

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because more than 6 timeous objections have been received and thus falls out with the Council's Scheme of Delegation.

CONSULTATIONS

ACC - Roads Development Management Team – No objection.

Cults, Bielside and Milltimber Community Council – No response received.

REPRESENTATIONS

A total of 24 representations were received, 11 in support and 13 objecting to the application. The matters raised can be summarised as follows:

Support

1. The land is fully owned by the applicant who does not need any permission to park their car there in the first place.
2. There is no shared amenity at Birchwood. Each property has its own land, which the neighbours have built garages, extensions, sheds and structures on, some without permission.
3. One car parking space would not worsen the previous situation where the area was used as a patio and loading area and for storing bins. This must be better than being parked next to the previously used parking space which was next to a bedroom window. You would expect this if you live in a flat.
4. This is a considerable waste of council resources and taxpayers' money.
5. The fence, as confirmed by ACC, is permitted development and not in question here.
6. Planning law does not entitle you to a view.

Objection

1. No requirement for additional parking. This causes an overprovision.
2. Paving materials are incompatible with the old granite house.
3. The car parking space reduces privacy, causes overshadowing, limits the outlook and creates additional noise to an unacceptable level.
4. The fence erected to mitigate amenity concerns further negatively impacts the amenity of ground floor properties.
5. There will be an unacceptable loss of a valuable area of open space garden from this application. It is an overdevelopment of this historic site.
6. The plans shown cannot be the full extent of the applicant's plans given the quantity of similar materials lying around the site.
7. The applicant claims the area was formerly a turning area and patio area. It has rarely, if ever, been used as such. It was previously covered with small trees, bushes and narrow tarmac path (35cm) between them.
8. The arboricultural assessment was subject to a key assumption that the development was a replacement of the existing hardstand parking area. There was no parking area at all, and there is no replacement as such. Therefore, the whole advice becomes void.

9. The applicant, postmen, delivery people and any visitors need to walk the length of the narrow corridor, passing very close to the ground floor windows, to access the stairway to the upper flat.
10. The development has negatively impacted the general view of the property from outside.
11. Believe that ACC planning department have the right to negate the permitted development rights regarding the fence and thus reject this application.

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 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.

Development Plan

Aberdeen City and Shire Strategic Development Plan 2020

The current Strategic Development Plan for Aberdeen City and Shire was approved by Scottish Ministers in September 2020 and forms the strategic component of the Development Plan. No issues of strategic or cross boundary significance have been identified.

Aberdeen Local Development Plan 2017 (ALDP)

Section 16 (1)(a)(ii) of the Town and Country Planning (Scotland) Act 1997 requires that, where there is a current local development plan, a proposed local development plan must be submitted to Scottish Ministers within five years after the date on which the current plan was approved. From 21 January 2022, the extant local development plan will be beyond this five-year period. Therefore, where relevant, weight should be given to paragraph 33 of the Scottish Planning Policy (2014) which states: "Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration".

The following policies are relevant –
Policy D1 – Quality Placemaking by Design
Policy H1 – Residential Areas
Policy NE5 – Trees and Woodlands

Supplementary Guidance

The Householder Development Guide (HGD)
Trees and Woodland

Aberdeen Local Development Plan 2020

The Report of Examination on the Proposed Aberdeen Local Development Plan 2020 (PALDP) was received by the Council on 20 September 2022. The PALDP constitutes the Council's settled view as to the content of the final adopted ALDP and is now a material consideration in the determination of planning applications. The exact weight to be given to matters contained in the PALDP (including individual policies) in relation to specific applications will depend on whether –

- these matters have been subject to comment by the Reporter; and
- the relevance of these matters to the application under consideration.

The following policies are relevant –
Policy D1 – Quality Placemaking
Policy D2 – Amenity

Policy H1 – Residential Areas
Policy NE5 – Trees and Woodland

EVALUATION

Principle of Development

The application site is located in a residential area under Policy H1 of the ALDP and the proposal relates to householder development. The proposal would comply with this policy in principle if it does not constitute overdevelopment; does not adversely affect the character and amenity of the surrounding area; does not result in the loss of open space; and it complies with the associated Supplementary Guidance.

The proposal would not result in the loss of any open space given that the proposal relates to development within the curtilage of the property. The remaining issues are discussed in the evaluation below.

Scale and Design

Policy D1 (Quality Placemaking by Design) states that all development must ensure high standards of design and have a strong and distinctive sense of place which is a result of context appraisal, detailed planning, quality architecture, craftsmanship and materials. This policy recognises that not all development will be of a scale that makes a significant placemaking impact but recognises that good design and detail adds to the attractiveness of the built environment. Additionally, the Householder Development Guide requires such proposals to be architecturally compatible in design and scale with the original house and its surrounding area. Materials used should be complementary to the original building. Any extension or alteration proposed should not serve to overwhelm or dominate the original form or appearance of the dwelling and should be visually subservient in terms of height, mass and scale.

The area of hardstanding would not result in overdevelopment and is considered acceptable in terms of form and size in relation to the original building and the open curtilage that it sits within. All proposed finishing materials are compatible with the original building and the surrounding area and the use of granite setts to the surrounds of the hardstanding is welcomed. It is noted that the development is not visible from a public viewpoint and thus, there is no impact on the character and visual amenity of the wider surrounding area.

Road Considerations

Given the proposal creates a new car parking area, the Council's Roads Development Management Team were consulted on the application. They have no objection, as the proposal meets the minimum dimensions and would be accessed via an un-adopted access road.

Impact on Residential Amenity

No development should result in a situation where amenity is 'borrowed' from an adjacent property or there is an impingement on the amenity enjoyed by others. The parking/turning area, as existing, is not located outside the flat owned by the applicant – given the applicant occupies the upper floor of the building – but directly outside a flat belonging to a third party occupying the ground floor property. There are four windows belonging to this third party flat, on the east elevation of the building at ground floor level, adjacent to the development. It is understood these windows provide light to a kitchen, a hallway and a bathroom.

During consideration of the previously withdrawn planning application (ref. 220410/DPP) a concern regarding the adverse impact of the car parking space on neighbouring amenity was raised. It was considered that cars, vans and other vehicles that would utilise this space would result in light and noise disturbance for the neighbouring properties due to factors such as engine noise, headlights and car doors opening and closing. Additionally, different people who would use

the space would have direct views into the windows of the immediately adjoining ground floor property. Such concerns were highlighted throughout the committee report for 220410/DPP; however, as mentioned, that application was withdrawn and therefore not determined by Aberdeen City Council. In the intervening time from that application being withdrawn and this application being submitted, a timber fence measuring approximately 2m in height has been installed around three sides of the proposed car parking space which then continues to enclose part of the lawn. Within the Supporting Statement submitted as part of this application, an entire section has been dedicated to 'Mitigation of Amenity'. Here, it is stated that *'this fence has now been erected and provides a barrier which will improve privacy, reduce light pollution and reduce noise pollution'*.

The Planning Service accept that the erection of the fence in this location is permitted development and thus, does not require planning permission. Notwithstanding the undoubted impact the fence has on neighbouring daylight and outlook, the installation of the fence itself cannot be considered as part of this application. Nevertheless, the Planning Service acknowledge that the fence has been erected as a direct result of the car parking space being constructed, with the Supporting Statement clearly setting out that the fence was erected purely to alleviate concerns regarding the amenity impacts associated with the parking space. Although the Planning Service recognise that the fence may reduce light and noise pollution caused by a vehicle using this space, ultimately the fence could be removed by the applicant at any point. Because it constitutes permitted development, the Planning Service cannot legitimately impose a condition requiring the retention of the fence due to the adverse impact the fence has on neighbouring properties as noted above. Moreover, due to the implications of the fence for neighbouring properties, which is a direct consequence of the car parking space being constructed in that location, the Planning Service do not consider this to be an adequate 'mitigation' measure. However, due to the fence being permitted development, the Planning Service recognise that this impact on neighbouring amenity cannot carry any significant weight as a reason for refusing the application.

With the fence in place and the space now completely enclosed on three sides, in order for the applicant to access the stairs to the upper flat, they would have no choice but to walk along a 0.9m wide path running directly along the eastern edge of the building. As a result, people using the parking space would have clear views into the windows of the ground floor property, which is a wholly separate unit. Although it is recognised that someone could have stood and walked along the eastern edge of the building previously, they probably had little reason to, whereas now, people would be required to walk along this edge in order to gain access to the flat.

Within the Supporting Statement, under the heading 'Purpose of Development', it is stated that *'it introduces an electric charging point to the property which helps future proof the property'* and that *'the location of the new parking space allows this charger to be located under the existing access stair avoiding installation on more prominent elevations of the building'*. However, the high fence enclosing the parking space would make use of that charging point very difficult. It would appear that installing the fence as a means of 'mitigation' has made one of the main purposes of the development unworkable.

Overall, the development has resulted in a change to the level of amenity afforded to the ground floor neighbouring properties, to their detriment. Therefore, the proposal would have an adverse impact on the level of privacy currently afforded to the neighbouring property, rendering the proposal contrary to Policy H1 of the ALDP, the HDG and Policy D2 of the PALDP.

Impact on Trees

As set out above, all trees within the site are protected by a Tree Preservation Order. As the application is retrospective, during the installation of the hardstanding, a concern over the location of the development within the Root Protection Area (RPA) of an adjacent mature lime tree (T30)

was raised and subsequently an enforcement notice was served requiring all operations on the site to stop.

Now, the application is required to be assessed against Policy NE5 (Trees and Woodlands) which advises that there is a presumption against development that will result in the loss of or damage to trees. In light of this, the Planning Service requested the submission of a tree survey, arboricultural impact assessment and a tree protection plan.

Subsequently, the Planning Service has received a document by Urban-Arb Arboricultural Consultants. This document provides information including a description of the works which were undertaken, a description of the tree protection measures during construction and the likely harm that has been caused to the lime tree as a result of the development.

Section 5 of the document by Urban-Arb Consultants sets out that *'it is understood that prior to the construction there was an existing surfaced parking area next to the house which was in use by the owners. However, in order to carry out maintenance work to the drainage system, the parking area was partially excavated'*. It is understood that the area was never really used as a car parking space and although the area may have been able to theoretically accommodate the dimensions of a car, the Council's Tree Officer has advised that there was a patio and a path with a row of shrubs situated at the edge of the driveway and thus, the area could never have been practically utilised for car parking. This appears to be corroborated by photos contained within letters of representation submitted to the Planning Service and aerial photographs seen on Google Maps. Thus, the Planning Service is satisfied that the area that is now the parking space, was not previously used for parking.

At Section 7, it is noted that the applicant has advised that no ground compaction took place. In direct contradiction of this statement however, and within this same section, Urban-Arb Consultants have advised that the type of construction method utilised requires aggregate layers to be well compacted. Consequently, the report has taken the position that there was compaction of the aggregate base layer. Had this method of installation been identified in a report submitted with an application prior to the commencement of work, it would have been highlighted as contravening BS 5837: 2012 which clearly states that compaction should be avoided when installing new hard surfaces within the RPA. The compaction of the aggregate sub-base layer conflicts with Policy NE5 which states *'there is a presumption against all activities and development that will result in the loss of, or damage to trees'*.

Section 8 discusses tree protection measures during construction. It sets out that *'photographs at the time of the construction show that a low rope fence attached to bollards was used to cordon off the general area around the tree. However, the fenced off area does not encompass the entire RPA'*. In addition, at Section 9, it is stated that *'the tree protection fencing that was put in place during the construction works did not comply with either of the specification options shown in BS5837:2012 because it was not securely fixed to the ground and was not sufficiently robust'*.

Furthermore, Section 9 of the report states *'prior to the construction works there was existing hard surfacing in place and it is assumed that the ground beneath the hard surfacing would have been compacted to some degree. Although ground compaction often restricts root growth and spread, for the purposes of this assessment, it has been assumed that roots would have been present throughout the RPA and under the original parking area'*. Based on the incorrect information that there was an existing parking space in the same location as the newly constructed parking space, the writer of the report makes the logical assumption that the ground would have already been compacted. However, as this area was unlikely to have previously been used as a parking space, any compaction would have been limited to that caused by pedestrian use only.

The report concludes that *'although the new parking area and patio have encroached the RPA of T030 by 12.3% the majority of the works took place within an area where the rooting environment is not likely to have been optimal'*. The author of the report largely puts this conclusion down to the fact that there was an existing hard surface and already compacted ground. It is then stated that *'removal of the drive and patio would involve some quite invasive works and there would be a significant risk of damage to the tree'*. It is considered correct that damage to the tree and the roots could occur if the new parking space were to be removed; however, provided this is done with care and under strict supervision, it would be possible to undertake the works without inflicting any further damage to tree T30 and its roots. All works within the RPA associated with the removal of the new car park would have to comply with BS 5837: 2012.

On the balance of evidence, based on the information contained within the report by Urban-Arb Consultants and the events that Council Officers have witnessed, it has been concluded that the development that was carried out without planning permission has not made provision for the long-term preservation of trees and is not sited so as to minimise adverse impacts on existing tree stock. Therefore, the proposal is considered contrary to Policy NE5 (Trees and Woodlands) and the SG: 'Trees and Woodlands'.

Equality Considerations

Section 149 of the Equality Act 2010 requires the Planning Authority, in the exercise of its functions, to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.

In this instance, it has been brought to the attention of the Planning Service that the proposal could impact on persons with one of the protected characteristics, disability. Within the Supporting Statement submitted as part of the application it is stated that *'the development introduces parking directly adjacent to the access stair to the property adding convenience for an elderly and disabled relative of our client'*. Further information provided to the Planning Service has highlighted that a smooth surface for operating a wheelchair and walking aid devices, including a Zimmer, is required and was not possible on the previous tarred and uneven surface.

It is noted that while personal circumstances can be capable of being a material consideration, the onus is on the applicant to demonstrate the reasons why these are special and exceptional and thus should be taken into account. However, compliance with the Public Sector Equality Duty can involve Local Authorities treating some persons more favourably than others. It is not considered that this is significant enough to outweigh the Planning Authority's duty in the public interest which, in this case, is the protection of neighbouring amenity and the existing trees that are subject to a Tree Preservation Order. Nevertheless, given the design of the parking space and in particular the enclosing of it on three sides by a high fence, the most direct and convenient route to the stairs giving access to the upper flat (the applicant's property) is blocked, thus necessitating those using the parking space and accessing the flat, including the person identified as having a disability, having to travel round a narrow, enclosed pathway to reach the stairs once exiting the parked vehicle.

Therefore, on balance, the application is considered not to advance equality of opportunity for people with a protected characteristic sufficiently to outweigh the Planning Authority's duty in the public interest which, in this instance, is the protection of trees, and the privacy and amenity enjoyed by the occupants of the immediately adjoining flat.

Aberdeen Local Development Plan 2020

The Report of Examination does not affect policies in a manner that is relevant to this application. The relevant PALDP policies substantively reiterate those in the adopted ALDP and therefore the proposal is not acceptable in terms of both plans for the reasons previously given.

Matters Raised in Letters of Representation

Support

1. *The land is fully owned by the applicant who does not need any permission to park their car there in the first place.*

Permission is specifically required for the installation of the hardstanding, which in turn has formed a car parking area.

2. *There is no shared amenity at Birchwood. Each property has its own land, which the neighbours have built garages, extensions, sheds and structures on, some without permission.*

Existing development within the grounds of Birchwood House is acknowledged. Those that have been constructed without planning permission is a matter which is separate from this planning application.

3. *One car parking space would not worsen the previous situation where the area was used as a patio and loading area, and for storing bins. This must be better than being parked next to the previously used parking space which was next to a bedroom window. You would expect this if you live in a flat.*

The impact of the development on residential amenity is discussed in the foregoing evaluation: 'Impact on Residential Amenity'.

4. *This is a considerable waste of council resources and taxpayers' money.*

In accordance with Planning legislation, the car parking space requires planning permission and thus there is a need for a planning application to be submitted seeking permission. The applicant chose to carry out the works without first obtaining consent, thus directly resulting in the need for the Planning Service to serve an Enforcement Notice. Further, each person concerned is within their right to submit a planning application; submit representations; and appeal any decision should that be necessary.

5. *The fence, as confirmed by ACC, is permitted development and not in question here.*

The fence has been confirmed as permitted development as is highlighted above.

6. *Planning law does not entitle you to a view.*

This is correct; however, outlook is an amenity consideration and a material planning consideration.

Objection

1. *No requirement for additional parking. This causes an overprovision.*

Roads Development Management were consulted on the application, taking into consideration parking capacity and noted no concerns.

2. *Paving materials are incompatible with the old granite house.*

The design of the development – including the materials used – has been discussed in the foregoing evaluation: ‘Scale and Design’.

3. *The car parking space reduces privacy, causes overshadowing, limits the outlook and creates additional noise to an unacceptable level.*
Impact on residential amenity is discussed in the foregoing evaluation: ‘Impact on Residential Amenity’.
4. *The fence erected to mitigate amenity concerns further negatively impact’s the amenity of ground floor properties.*
The fence is discussed in the foregoing evaluation: ‘Impact on Residential Amenity’.
5. *There will be an unacceptable loss of a valuable area of open space garden from this application. It is an overdevelopment of this historic site.*
The development does not result in the loss of valued open space given it is located within a residential curtilage, nor does it result in overdevelopment given its scale in comparison to remaining garden ground.
6. *The plans shown cannot be the full extent of the applicant’s plans given the quantity of similar materials lying around the site.*
The Planning Service cannot speculate on any future development and are required to assess the development which forms part of the current planning application.
7. *The applicant claims the area was formerly a turning area and patio area. It has rarely, if ever, been used as such. It was previously covered with small trees, bushes and narrow tarmac path (35cm) between them.*
The previous use of the area is acknowledged and discussed in the foregoing evaluation: ‘Impact on Trees’.
8. *The arboricultural assessment was subject to a key assumption that the development was a replacement of the existing hard stand parking area. There was no parking area at all, and there is no replacement as such. Therefore, the whole advice becomes void.*
The previous use of the area is acknowledged and discussed in the foregoing evaluation: ‘Impact on Trees’.
9. *The applicant, postmen, delivery people and any visitors need to walk the length of the narrow corridor, passing very close to the ground floor windows, to access the stairway to the upper flat.*
This impact is discussed in the foregoing evaluation: ‘Impact on Residential Amenity’.
10. *The development has negatively impacted the general view of the property from outside.*
The design impact of the development is discussed in the foregoing evaluation: ‘Scale and Design’.
11. *Believed that ACC planning department have the right to negate the permitted development rights regarding the fence and thus reject this application.*
The Planning Authority have confirmed that the fence constitutes permitted development and thus, does not require planning permission in line with the provisions of the Town and Country Planning (General Permitted development) (Scotland) Order 1992, as amended.

RECOMMENDATION

Refuse.

REASON FOR RECOMMENDATION

The development fails to adequately retain the level of amenity previously afforded to ground floor neighbouring property due to the siting of the development directly adjacent their ground floor windows, having a notable detrimental impact on their privacy. Furthermore, the development fails to minimise the adverse impact caused to adjacent protected trees, namely Lime Tree T30, through the inappropriate siting of the developing, the construction methods utilised and the inadequate protection of the tree while this work was being carried out. Therefore, the proposal fails to accord with the fundamental aims of Policies H1 (Residential Areas) and NE5 (Trees and Woodlands) of the current Aberdeen Local Development Plan 2017; its associated Supplementary Guidance: 'The Householder Development Guide' and 'Trees and Woodlands'; and Policies H1, D2 and NE5 of the Proposed Aberdeen Local Development Plan 2020.