

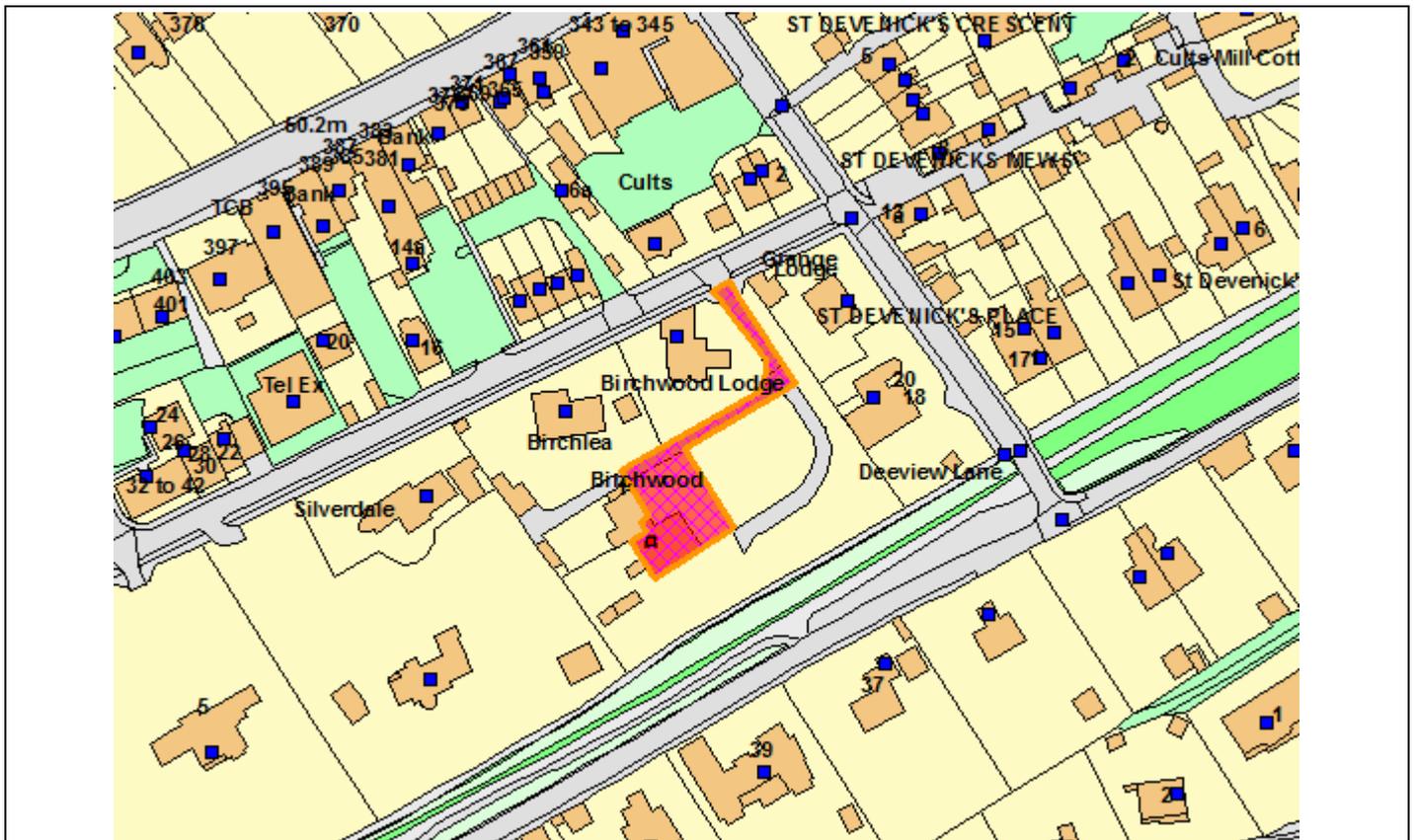


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 7th December 2023

Site Address:	Upper Birchwood 1 South Avenue, Aberdeen, AB15 9LP
Application Description:	Erection of shed to front (retrospective)
Application Ref:	231263/DPP
Application Type	Detailed Planning Permission
Application Date:	13 October 2023
Applicant:	Mr Stuart Spearrit
Ward:	Lower Deeside
Community Council:	Cults, Bieldside and Milltimber
Case Officer:	Roy Brown



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RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The application site comprises an upper storey residential flat within a late 19th century granite-built building comprising three flats, an area of residential curtilage to the northeast of the building and a shared driveway. The site is located in the established residential area of Cults and is accessed from South Avenue to the north. The neighbouring two residential flats in the building are located on its ground floor.

The total curtilage of the three flats covers an area of approximately 1 acre. Residential dwellings bound the site to the southwest, northwest and northeast, while the Deeside Way sits to the southeast. Like many of the detached residential dwellinghouses to the north of the Deeside Way in the area and along Lower Deeside generally, the original building has a southeast facing principal elevation orientated towards the Deeside Way. The immediate surrounding area, particularly along the southern side of South Avenue, is characterised by the presence of detached dwellinghouses, many of which are set within substantial residential curtilages.

Whilst much of the wider curtilage is maintained as a lawn, there are many trees of varying species within the wider curtilage which are protected by Tree Preservation Order (TPO) 157.

The area to which the application relates extends to 45m² and is set within an area of curtilage which is 'private' in its appearance. It relates to the applicant's upper flat and has been formed by way of the presence of a timber fence (permitted under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended) and the formation of a hard surface (through the granting of Planning Permission Ref: 221070/DPP on appeal). A lime tree (T30) is located at the northern end of this area. A shed has recently been erected at the southern end of the area without the necessary planning permission and is thus unauthorised.

Relevant Planning History

A planning application (Ref: 220410/DPP) was submitted on the 30th March 2022 which retrospectively sought planning permission for the resurfacing of the external amenity area to form parking/turning area to the northeast of Birchwood. It was withdrawn on the 15th August 2022.

Planning permission (Ref: 221313/DPP) was granted retrospectively on the 7th January 2023 for the formation of hardstanding to the southwest of the building in the area of curtilage associated with one of the neighbouring ground floor flats, Birchwood House.

Planning permission (Ref: 221070/DPP) was granted retrospectively on the 15th March 2023 following a successful appeal to the Scottish Ministers for the resurfacing of the external amenity area to form a parking/turning space and patio area to the northeast of Birchwood. It was granted subject to a condition requiring that the ground around the Lime Tree (T30) within the application site would be de-compacted.

On the 16th October 2023, a Tree Works application (Ref: 231175/TPO) granted works to several trees in TPO 157 and refused the proposed felling of the aforementioned lime tree (T30). In 2021, a Tree Works application (Ref: 211571/TPO) granted the removal of one diseased lime tree on the site and refused the proposed removal of several other trees on the site.

APPLICATION DESCRIPTION

Description of Proposal

Planning permission is sought retrospectively for the erection of a domestic shed in the residential curtilage (private garden area) to the northeast of Birchwood. The shed building has a shallow sloped roof with a maximum height of c.2m and an eaves height of c.1.9m. Its built footprint covers an area of c.4sqm (c.3.7m in length and c.1.2m in width) and due to its overhanging roof the overall width of the structure is c.2m. It is primarily finished in timber linings which are painted grey. It has a shed door on its southwest facing elevation and a hatch on its northwest facing elevation. The shed is within the area partially enclosed by the existing 1.96m high fence.

Amendments

None.

Supporting Documents

All drawings can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=S2DDPWZGJ600>

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because it is being recommended for approval and has been the subject of six or more timeous letters of representation (following advertisement and/or notification) that express objection or concern about the proposal.

CONSULTATIONS

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

REPRESENTATIONS

The application has been the subject of six objections. The matters raised are summarised below:

- The shed adversely affects the residential amenity of the adjacent residential dwellings in terms of privacy, noise and disturbance, light pollution and outlook. The siting of the development is considered un-neighbourly and anti-social as it is forward of the east-facing windows of the ground floor residential flat. It is noted that the outbuildings serving the other flats are not located near the building.
- Concerns that it is used as a bar used to serve alcoholic beverages to guests, encouraging antisocial behaviour. It is stated that the building is serviced.
- The structures on the site are considered to adversely affect the character and visual amenity of the surrounding area.
- The shed and other structures are considered over-development.
- The proposal would conflict with Policy H1 (Residential Areas) of the Aberdeen Local Development Plan and the Supplementary Guidance: The Householder Development Guide. It is considered that the shed is located to the front of the building.

- The statement in the application form that the applicant did know that permission was required is disputed. Concern that this is another application on the site which is being submitted retrospectively.
- Concerns about the impact on the trees as it appears the shed is within the Zones of Influence of trees T26 and T30.
- Matters relating to the Land Ownership Certificate that was initially submitted with the application and discrepancies on the application form.
- Matters relating to the existing hard surface which is used by the applicant and an existing unauthorised trellis (which is located on the western fence adjacent to the shed).
- Concern about future development and activity which may take place on the site.
- Civil matters relating to rights of access and sewer connections.

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.

Development Plan

National Planning Framework 4 (NPF4)

- Policy 1 (Tackling the Climate and Nature Crises)
- Policy 2 (Climate Mitigation and Adaptation)
- Policy 3 (Biodiversity)
- Policy 6 (Forestry, Woodland and Trees)
- Policy 14 (Design, Quality and Place)
- Policy 16 (Quality Homes)

Aberdeen Local Development Plan 2023 (ALDP)

- Policy H1 (Residential Areas)
- Policy D1 (Quality Placemaking)
- Policy D2 (Amenity)
- Policy NE5 (Trees and Woodland)

Aberdeen Planning Guidance (APG)

- Householder Development Guide
- Trees and Woodland

EVALUATION

Principle of Development

The determining issues in the assessment of this application are its assessment against the relevant aforementioned policies of the Development Plan.

The proposal comprises householder development. Policy 16 (Quality Homes) g) of National Planning Framework 4 (NPF4) states that householder development proposals will be supported where they:

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

The application site is zoned as Policy H1 (Residential Areas) in the Proposals Map of the Aberdeen Local Development Plan 2023 (ALDP). This policy states that within such areas, proposals for new householder development will be approved in principle if it:

1. does not constitute over-development; and
2. does not have an adverse impact to residential amenity and the character and appearance of an area; and
3. does not result in the loss of open space.

As this proposal concerns householder development that is located in existing residential curtilage, it would not result in the loss of open space. The impact of the householder development on the character and visual amenity of the surrounding area, the impact of this householder development on the existing levels of residential amenity afforded to the surrounding residential dwellings are assessed under the headings below.

Residential Amenity

Policy 16 (Quality Homes) g) ii. and the Qualities of Successful Places referred to in Policy 14 (Design, Quality and Place) of NPF4 as well as Policies H1 (Residential Areas), the Qualities of Successful Placemaking referred to in D1 (Quality Placemaking) and D2 (Amenity) require this development to not adversely affect the amenity afforded to the neighbouring residential dwellings.

It is recognised that the building would be forward of the northeast facing windows serving one of the ground floor flats, that is not in the applicant's ownership. It has been established using the 25-degree and 45-degree methods set out in the Householder Development Guide Aberdeen Planning Guidance (APG) at a maximum height of c.2m and a distance of c.5.8m from Birchwood's north east elevation, the development would be of a height and distance from the building's eastern elevation whereby it would not impact on existing levels of sunlight and background daylight afforded to those windows. Furthermore, it would thus not impact the level of sunlight and daylight afforded to any other neighbouring residential dwelling or residential curtilage.

Whilst it is recognised, and indeed it has been raised in the representations, that the proposed development is located relatively close to the building and the windows of the ground floor flat, relative to the significant size of the residential curtilage of the three flats and it being a small domestic shed of minor scale and massing, the domestic building is not itself of a design, scale and massing whereby it is overbearing or detracts from its outlook in any significant manner.

The proposal would not adversely affect the privacy afforded to any neighbouring residential dwelling. There are no windows within the structure and thus it would not result in the overlooking of neighbouring residential dwellings or curtilage. It is largely screened by the fence (permitted under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended), albeit it is recognised that structure causes harm to the outlook of the ground floor flat.

As a built structure, this shed does not result in noise generation whereby it disturbs neighbours. It has been noted in the representations that this structure is anticipated to be used as a 'bar' for entertaining guests and indeed its design with a hatch and a shelf suggests that it has the appearance as such. It is noted that the presence of this structure may encourage further activity in this part of the residential curtilage, taking into account that a hard surface area referred to as a 'bbq area' was granted by Planning Permission Ref: 221070/DPP, the intensity and nature of activity from the presence of this shed in this space is not materially different to had it not existed previously. As a householder development, planning permission is sought for the erection of this domestic shed which, like the land on which it is located, is for any purpose that is incidental to the enjoyment of the existing dwelling, therefore no change of use is proposed. As such, the development does not itself enable or result in an intensity of use or activity that is materially different to the use of the land as residential curtilage, whereby the residential amenity of the neighbouring flats would be materially affected.

The shed is of a design, minor scale and siting that does not adversely affect the existing residential amenity of the surrounding area to any significant degree, in accordance with the aims of Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4, Policies H1 (Residential Areas), D1 (Quality Placemaking) and D2 (Amenity) of the ALDP.

Impact on the Character and Visual Amenity of the Surrounding Area

To determine the effect of the proposal on the character and visual amenity of the surrounding area it also is necessary to assess it in the context of Policy 14 (Design, Quality and Place) of NPF4 and Policy D1 (Quality Placemaking) of the ALDP. Policy 14 states that development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale. Policy D1 of the ALDP requires all development to ensure high standards of design, create sustainable and successful places and have a strong and distinctive sense of place which is a result of detailed contextual appraisal.

The shed is of a minor scale, height and massing in that it has a maximum height of c.2m and it has a footprint of c.4.5sqm and is thus evidently subordinate in scale to the original building. The shed accords with the specific design principles for outbuildings in the Householder Development Guide APG in that it is subordinate in scale to the dwellinghouse, single storey in height, scale and massing and furthermore it is not forward of the front building line, the southeast elevation, of the original building. As such, and as it used for a domestic purpose, it does not constitute overdevelopment. Taking into account the substantial scale of the original building and that, including the shared driveway and other curtilages the site covers a total area of approximately 1 acre, the vast majority of which is undeveloped, the shed would not result in more than 50% of the front and rear garden ground being covered by development, in accordance with the APG.

The building is of design, form and finishing materials, timber linings, which are complementary to its domestic setting within existing residential curtilage. In terms of its siting, the shed is set back from, and thus does not detract from the character of the historic southeast facing principal elevation of the building. Whilst it is acknowledged that many of the domestic structures serving the neighbouring flats are contained to the southwest of the building, the presence of this shed being at the northeast side of the building would not in itself result in visual harm in the context of the original building, taking into account that a hard surface and driveway already exists in this space. The building is particularly minor in its scale and massing relative to 1.96m high fence enclosure, from which it is also screened. That structure is permitted under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, albeit a structure that is somewhat incongruous in its appearance to its setting. The shed is not readily visible from any public vantage point, taking into account that the ground level of the Deeside Way itself is substantially lower than that of the application site.

By way of its design, scale, materials, and siting, the shed does not adversely affect the character and visual amenity of the original building or the surrounding residential area, in accordance with the aims of Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 and D1 (Quality Placemaking) and H1 (Residential Areas) of the ALDP.

Trees

Paragraph b) i. of Policy 6 (Forestry, Woodland and Trees) of NPF4 states that development proposals will not be supported where they will result in any loss of ancient woodlands, ancient and veteran trees, or adversely impact on their ecological condition. Policy NE5 (Trees and Woodland) of the ALDP states that development should not result in the loss of, or damage to, trees and that buildings and infrastructure should be sited to allow adequate space for a tree's natural development, taking into account the predicted mature height, canopy spread and future rooting environment.

In this instance, the shed is located c.13m from a sycamore tree (T26) and c.15.6m from a lime tree (T30), which based on the information submitted is beyond the Root Protection Areas of these trees. However, taking into account the potential mature heights of the trees – 20m for T30 and 21m for T26, it is understood that the shed falls within the Zone of Influence of these trees.

Taking into account the distance from these trees, the small scale and footprint of the structure and its location on an existing hard surface, it is considered that the shed has not, and would not result in the damage or loss of these trees, or any other trees within TPO 157. The proposal therefore accords with Policies 6 (Forestry, Woodland and Tree) of NPF4 and NE5 (Trees and Woodland) of the ALDP.

Tackling the Climate and Nature Crises

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) requires development proposals to be designed and sited to minimise lifecycle greenhouse gas emissions as far as possible, and to adapt to current and future risks from climate change.

As the shed would not result in the damage or loss of any trees, as it comprises the erection of a timber shed building within a residential curtilage, it is of a sufficiently small-scale that it does not have any material impact on the global climate and nature crises, climate mitigation and adaptation. Furthermore, there are no opportunities that can be identified to minimise greenhouse gas emissions given the nature of the proposal.

Policy 3 (Biodiversity) of NPF4 requires development proposals to contribute to the enhancement of biodiversity. Whilst no biodiversity conservation, restoration and enhancement measures have been included in this application, this policy excludes householder development from having to include these. Nevertheless, the shed would not have any adverse impact on biodiversity, particularly in that it has not, nor would it affect the health and long-term retention of the nearby trees.

The proposal would therefore comply with the aims of Policies 1 (Tackling the Climate and Nature Crises), 2 (Climate Mitigation and Adaptation) and 3 (Biodiversity) of NPF4.

Matters Raised in the Representations

The relevant matters relating to residential amenity in terms of privacy, noise, and outlook, as well as the use of the building have been addressed in the above evaluation. Permission is

retrospectively sought for a building that to be used for a domestic purpose and no change of use has been sought. The function of the space as an area where time would be spent by the occupants of the upper floor flat has already been established through presence of the existing hard surface and boundary enclosure.

The impacts on the character and visual amenity of the surrounding area and trees, and whether the development would constitute over-development have been assessed in the evaluation. It should be noted that the Supplementary Guidance: The Householder Development Guide referred to in the representations has been superseded. The adopted Householder Development Guide APG is of relevance.

Potential disturbance and anti-social behaviour which may occur in the area are matters which could be addressed through noise or antisocial behaviour legislation and/or by the police. The right of access to services is not a material planning consideration and is a civil matter between the relevant parties. The external lights referred to in the representation do not require planning permission and are not included in this application.

The matters relating to the existing hard surface on the site is not relevant in the assessment of this application. Planning permission for the hard surface was granted at appeal to Scottish Ministers. The matter raised relating to the unauthorised trellis located on top of the fence between the east elevation of the building and the shed is the subject of a separate planning enforcement investigation and is not of relevance to the assessment of this application, which is considering the development in the context that this structure is not authorised.

Since the representation was received, the applicant has submitted an application form and a valid Land Ownership Certificate confirming that they do not own all the land within the red line boundary and they have certified that they have served notice on all other owners of any part of the land to which the application relates, as required by the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, as amended. It is the responsibility of the applicant to ensure that the information they submit is correct. It is not for the planning authority to probe the legitimacy of this information.

The accuracy of the statement in the application form that the applicant was not aware that planning permission was required for the development is noted. However, it has no impact on the outcome of this planning application and it is not for the planning authority to dispute this statement.

Potential future activity, development or structures in the curtilage are not material in the assessment of this application. Any future proposals, should they require planning permission, would be assessed on their own merits.

RECOMMENDATION

Approve Conditionally

REASON FOR RECOMMENDATION

The shed is of a design, scale and massing that does not adversely affect the existing residential amenity of the surrounding area, notably in terms of the level of sunlight, daylight, outlook and privacy afforded to the ground floor flats in the adjacent building. By way of its design, scale, materials, and siting, the shed does not adversely affect the character and visual amenity of the original building or the surrounding residential area. The proposal therefore accords with the aims of Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of National Planning Framework 4 (NPF4) and Policies H1 (Residential Areas), D1 (Quality Placemaking) and D2

(Amenity) of the Aberdeen Local Development Plan 2023 (ALDP); and the aims of the Householder Development Guide Aberdeen Planning Guidance (APG).

Taking into account the distance from existing trees, the small scale and footprint of the structure and its location on an existing hard surface, it is considered that the shed has not, and would not result in the damage or loss of any trees in the area, notably those subject to Tree Preservation Order 157. The proposal therefore accords with the aims of Policies 6 (Forestry, Woodland and Tree) of NPF4 and NE5 (Trees and Woodland) of the ALDP; and the Trees and Woodlands APG.

The proposal is sufficiently small-scale that it does not have a significant impact on the global climate and nature crises, nor to climate mitigation and adaptation. The shed would not have any adverse impact on biodiversity, particularly in that it has not, nor would it affect the health and long-term retention of the nearby trees. It therefore complies with the aims of Policies 1 (Tackling the Climate and Nature Crises), 2 (Climate Mitigation and Adaptation) and 3 (Biodiversity) of NPF4.

CONDITIONS

(01) DURATION OF PERMISSION

The development to which this notice relates must be begun not later than the expiration of 3 years beginning with the date of this notice. If development has not begun at the expiration of the 3-year period, the planning permission lapses.

Reason - in accordance with section 58 (duration of planning permission) of the 1997 act.