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22nd November 2023

Dear Sir/Madam

**RETROSPECTIVE APPLICATION FOR ERECTION OF TEMPORARY ENCLOSURE
FENCE ON LAND TO THE REAR OF 6 CRAIGDEN, ABERDEEN**

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On behalf of my client Mr David Lawrie, I enclose for your attention a retrospective application for a temporary 1.8m timber enclosure fence to protect an area of open space and planting to allow it to mature.

BACKGROUND

The application site lies to the rear of no's 5, 6 and 7 Craigden, forming the open space of that residential development, built in 1998. That land has been the subject of anti-social behaviour with youths congregating and setting fire to trees planted on the grounds. More recently, the property owners at Craigden were approached by the owners of the open space and given the opportunity to purchase the land as part of a shared ownership arrangement. Not all owners were willing or able to proceed, therefore, Mr Lawrie decided to progress on his own in order to protect the area of land directly behind his property.

Mr Lawrie contacted the Council on 11th April 2019 through their pre-application procedures, advising that he had been given the opportunity to purchase the land and his intention was to enclose that area to prevent vandalism and ultimately protect new trees that had been planted, to ensure the area is maintained in an appropriate way. He went onto highlight that the area would be held separately from his property at 6 Craigden and would therefore not form part of his private property. No response was received from the Council and Mr Lawrie assumed that, given that he was not changing

the use of the land to private garden ground, he could proceed with the boundary enclosure.

That enclosure is made up of a new 1.8m timber fence which extends along the southern and western boundaries only. It meets an existing granite retaining wall to the north of the site, with the eastern boundary formed by an existing 1.8m timber fence making up the rear garden boundary of no's 5, 6 and 7 Craighden. The fence has been erected to match existing boundary fences in the area and therefore sits well in that context and has done so for a number of years.

Aberdeen City Council contacted Mr Lawrie by letter dated 23rd June 2022, stating that *"you appear to have enclosed an area of public open space immediately behind your property and are utilising the area as private garden ground"*. Mr Lawrie responded confirming that this assumption was incorrect and no change of use had taken place. Mr Lawrie attached the title sheet which highlighted the area of land purchased. This title demonstrates that the land under consideration is held in separate title from Mr Lawrie's property at no. 6 Craighden and forms no part of the private garden ground of that property.

Entry 7.1 (ii) of the Title confirms that as Burdened Proprietors, Mr and Mrs Lawrie *"shall be entitled at all times to use the said areas of woodland for such purposes as they in their sole discretion, but acting at all times in accordance with generally prevailing principals of good silviculture practice, consider are necessary or appropriate as being ancillary to the maintenance and/or management of said woodland"*.

As there has been a history of vandalism and antisocial behaviour in the area (comprising youths accessing the site, dropping and leaving litter, damaging trees and fences and setting fires) Mr Lawrie as Burdened Proprietor considered it necessary to enclose the area to protect it, as well as the 30 new trees planted, from vandalism. It is argued that this is appropriate and in conformity with the title deeds.

It was reiterated that Mr Lawrie does not use this area as private garden ground. The private grounds of no. 6 Craighden are of ample size for that purpose and have a separate boundary enclosure. Mr Lawrie has not removed his existing boundary fence and it is very clear that the two areas are separate. Although the provision of a gate has been made from his garden, this is purely for ease of access for maintenance and the neighbouring properties at no. 5 and 7 could do similar.

The Council responded by email dated 31 August 2022, stating that in consideration of the circumstances and the land no longer readily available to members of the public, an application for change of use from public open space to community garden, including the fence would be required.

It was argued that the planting of trees on the site fell under the definition of "forestry" as detailed in Section 26 (2) (e) of the Town and Country Planning (Scotland) Act 1997 and therefore would not require planning permission. However, an application, for a permanent change of use from public open space to community garden and erection of associated enclosure fence, was submitted on 31st October 2022 under the application reference 221307/DPP. It was refused on 2 June 2023. It was taken to the Local

Review Body in November 2023, however, they agreed with the position taken by the Planning Officer.

This application varies from that sought previously and seeks permission for the fence for a temporary period of 5 years. This would allow the planted trees to establish and once they have and are less susceptible to damage from vandalism, the fence would be removed. The applicant is also happy to consider the removal of the lock from the gate to ensure access is available to all. It is considered that this would deter entry and vandalism.

BOUNDARY ENCLOSURE

The boundary enclosure consists of a 1.8m timber fence to the south and western boundaries of the site. An existing 1.8m fence bounds the site to the east, while an existing stone wall sits to the north.

Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GDPO) provides details of permitted development and is split into parts. Part 2 deals with Sundry Minor Operations and Class 7 permits *“the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure”*.

Part b) outlines that any gate, fence, wall or other enclosure that is above 2m would require planning permission and part a) outlines that if the gate, fence, wall or other enclosure is within 20m of a road, planning permission is required if the enclosure exceeds 1m.

It is argued that the requirement for planning permission within 20m of a road is related to road safety considerations. In this instance, there is a road/bridge that lies to the west of the site. However, it lies within 20m above the site. As the road is not immediately adjacent to the application site (but sits at a considerable height above the site/fence) it does not lie within any visibility splays and therefore has no impact on the functioning or safety of the road. In fact, there is a similar sized fence that sits along the roadside to the north of the site which would have more of an impact on the road. If that fence has been deemed to be acceptable, then the fence surrounding the site should also be considered acceptable, given that it sits further from the road/bridge.

A fence of 1.8m in height would normally be permitted under the GPDO. Considering that the road has no direct relationship with the fence in this case, it therefore has no impact on the safe functioning of the adjacent road and planning permission should be granted.

Impact on Residential Area

Consideration is also given to **Policy H1: Residential Areas** as the site is located within such an area in the Aberdeen Local Development Plan 2023. That policy states

that within existing residential areas, proposals for new development and householder development will be approved in principle if it meets a number of criteria:

It does not constitute over-development

There is no development proposed on the site other than the erection of the fence. That fence is required to prevent antisocial behaviour on the site, which was being experienced. It does not constitute overdevelopment as it is only along two of the site boundaries and of a similar height to existing boundary enclosures in the area and therefore sits well in the context of the site. As such, the proposals do not constitute overdevelopment. This was previously accepted by the Planning Officer through the application for permanent change of use.

It does not have an adverse impact to residential amenity and the character and appearance of an area

As there is no built development proposed on the site, it is argued that there is no impact on the character and amenity of the surrounding area in line with Policy H1. It mirrors the existing fences to the rear of no's 5, 6 and 7 Craigden, it sits well on the site, with no detrimental impact on the character and amenity of the area. This is supported by comments from residents within Craigden who have previously confirmed that *"Since it's transferred into private control it is superb, well maintained and a great amenity to our community"*. Also, that *"the fence and associated landscaping has resulted in a much tidier area and is a welcome initiative given the previous; dumping, vandalism and general untidiness"* and that the *"area has been improved tremendously, with numerous trees and shrubs being planted of the site"*.

In fact, the aim of the temporary fence is to allow the new trees to become established, free from the threat of vandalism. Removing the fence before the trees have established will allow opportunities for vandalism and littering to return, to the severe detriment of the character and amenity of those living adjacent to the site. The temporary retention of the fence is therefore essential in improving the character and amenity of the surrounding area and quality of the neighbourhood, fully in compliance with this policy.

It does not result in the loss of open space

Although the land is open, green space, it is not considered that it has any significant value in terms of its use by the wider population of Aberdeen. This was exacerbated by the previous removal of trees, vandalism, littering and anti-social behaviour experienced on the site, which was to the detriment of this area. This was supported by a representation to the previous application from someone in the area which stated *"The area was historically a piece of wild impenetrable bramble and fallen timber filled with massive amounts of rubbish discarded from the bridge. A total mess"*. The only efforts to improve the open space has been by the appellant. This land would have been kept open by them, but the temporary fence is considered essential in protecting the land and trees from vandalism, to ensure the area of open space is maintained to a high standard. There needs to be a balance in allowing those in the vicinity to access

it while keeping out unwanted behaviour, which is destroying this area of open space.

Further to this, the land was originally identified as part of a wider residential zoning. That suggests that it is open space delivered as part of the residential development at Craighden and has more of a local value to those properties. This will not change as a result of this application. The area of ground remains accessible to all property owners at Craighden from a footpath along the North Burn of Rubislaw, through a gate on the southern boundary. This is accessible by a combination lock, to which all owners have access. This clearly demonstrates that the land under consideration, becomes a temporary fenced area of open space for use by all residents (similar to the original purpose of the land) until the trees have established and the fence can be removed.

Finally, open space is defined as the open, usually green land within and on the edges of settlements. This includes, parks, public gardens, allotments, woodland, play areas, playing fields, green corridors and paths, churchyards and cemeteries, natural areas, institutional land as well as civic space such as squares or other paved or hard surfaced areas with a civic function. This indicates that open space takes many forms and the temporary enclosing the area of land will not result in the loss of this area of open space. It will simply protect it until such time as the trees have become established which will significantly benefit the long term value of the site going forward. While the trees are becoming established, it can still be accessed by those living within the Craighden development as open space as part of that development.

Impact on Green Space Network

The land under consideration, as well as some land in the built up areas in the vicinity, is also covered by a Green Space Network (GSN) designation, understood to be due to its proximity to the North Burn of Rubislaw to the south. **Policy NE2: Green and Blue Infrastructure** states that the Council will protect, support and enhance the Green Space Network which broadly encompasses the wildlife, biodiversity, ecosystem services & functions, access, recreation, landscape and townscape value of the Green Space Network. Development that does not achieve this will not be supported.

The proposals will have no detrimental impact on the wildlife, recreation, ecosystem and landscape value of the GSN. The temporary fence will keep out those that are seeking to destroy nature restoration and biodiversity in this area and is considered essential in protecting the land and trees from vandalism for a period long enough to allow the trees to establish. The temporary fence is therefore considered to support the wildlife, ecosystem and landscape value of the area, thereby improving the GSN in this area. A balance needs to be found between allowing access to those in the vicinity while the trees establish and protecting the trees. This application achieves that, while complying with the requirements of **NPF4 Policy 20** and **LDP Policy NE2**.

Policy NE2 also contains a section on outdoor access. It requires that new development will maintain and enhance the integrity of existing access rights to land. Although it will temporarily restrict the access to the area, through the provision of the fence, it will only do so for the wider general public as it continues to be accessible to residents in the area, via a combination lock on the gate in the fence, to which all residents at Craighden have access.

This land was never intended to be accessible by the wider public as an area of high quality open space, or for health and wellbeing purposes as it was land provided as open space for those living at Craighden. It has been demonstrated that providing access to the wider public in the past, has had a detrimental impact on the open space and the trees planted in the area. In any case, the approval of this application would only restrict access for a temporary period, until such time as the trees become established, protecting the amenity of the area for those most impacted.

In the meantime, the temporary fence will not significantly impact the ability of the wider public to access open space, given there is a network of Urban Green Space along the North Burn of Rubislaw in the immediate vicinity of the site, including an established public pathway, which sits well outside the appeal site. The Hazlehead area, within which the application site is located, is well provided for open space and has the largest concentration of parks and open space than anywhere else in the City. This includes Hazlehead Park, the largest park in Aberdeen extending to 180 hectares. The proposals therefore cause minimal impact on the GSN and the overall integrity is therefore maintained in line with policy requirements.

The temporary fence would not block any through route to further open space in the area and no core paths are affected by the fence. Open space in the vicinity, outwith the application site, is considered to be more valuable for the general public to access and as there is adequate provision elsewhere, the impact of temporarily restricting access is considered to be negligible to the wider public. **NPF Policy 20** allows the net loss of green infrastructure if it would not result in or exacerbate a deficit of green infrastructure provision overall. It is argued that the proposals would comply with that policy while ensuring the green space behind the houses is protected and the integrity of the land is maintained, thus benefitting those in the immediate vicinity to maintain access high quality open space. It should also be remembered, that once the trees have become established, the fence will be removed.

It is therefore argued that the proposals to temporarily fence this area to the rear of no. 6 Craighden complies with the adopted 2023 Local Development Plan. As such, it is therefore respectfully requested that planning consent is granted for the temporary retention of the 1.8m boundary enclosure to allow the protection of the 30 or so trees that have been planted. This will allow adequate time for the trees to establish resulting in them being less susceptible to damage from vandalism and ensure their long term survival to the benefit of the long term amenity of the neighbouring residents.

Should you have any queries, or wish to discuss any elements of the planning application, please do not hesitate to contact me.

Yours faithfully



Claire Coutts
Associate

Encs