

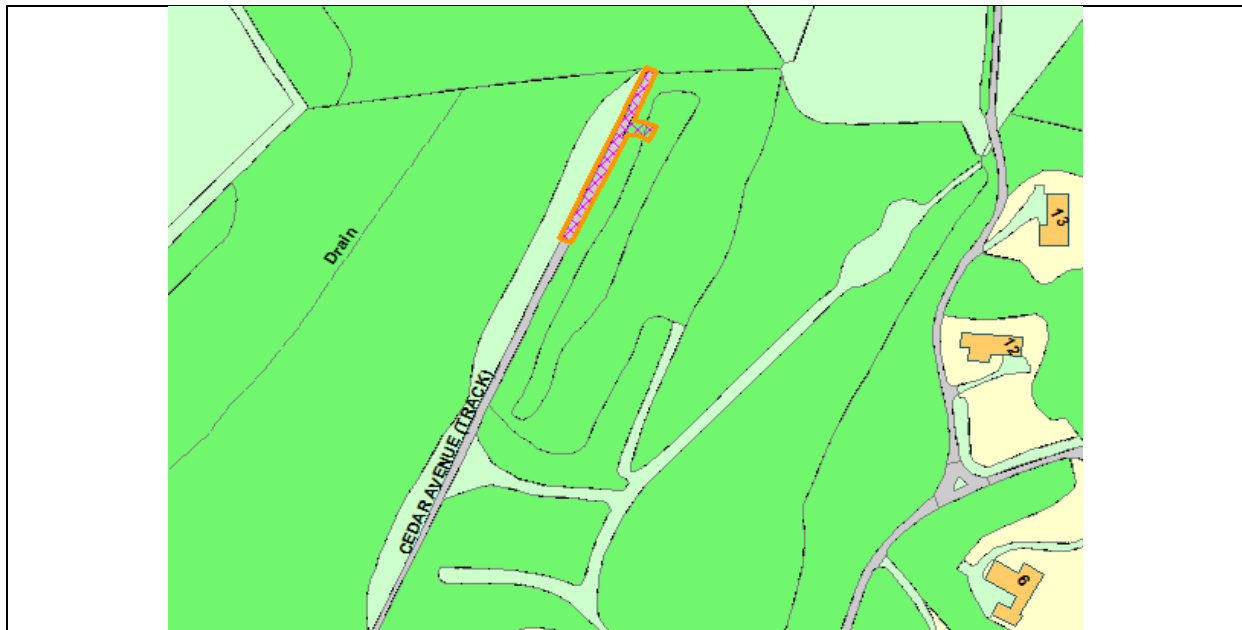
Kincardine and Mearns Area Committee Report 31 August 2021

Reference No: APP/2020/2556

Full Planning Permission for Change of Use of Forestry Land to Garden Ground (Class 9) and Formation of Access at Land to the West of Nusa Dua, Durris, Banchory, AB31 6AF

Applicant: Mr Andrew McGuinness, 24 North Silver Street, Aberdeen, AB10 1RL
Agent: The Architecture and Planning, 3 Bon Accord Crescent, Aberdeen, AB11 6XH

Grid Ref: E:379169 N:796214
 Ward No. and Name: W18 - Stonehaven and Lower Deeside
 Application Type: Full Planning Permission
 Representations: 8
 Consultations: 5
 Relevant Proposals Map: Aberdeenshire Local Development Plan
 Designations: Aberdeen Housing Market Area
 Complies with:
 Development Plans: Yes
 Main Recommendation: Grant



NOT TO SCALE

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1. Reason for Report

- 1.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.1 of Part 2A List of Committee Powers and Section C.3.1f of Part 2C Planning Delegations of the Scheme of Governance as there have been valid objections from six or more individuals or bodies with separate postal addresses or premises.
- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

2. Background and Proposal

- 2.1 The area around the application site has been the subject of a number of applications dating back to 2014 when Planning Permission in Principle (APP/2014/1750) was granted for three dwellinghouses, over the following two years Matters Specified in Conditions applications were approved for tree and ecological survey information, foul and surface water drainage proposals and for the layout, landscaping, access, parking and footpath access for the three sites.
- 2.2 In 2019 Full Planning permission (APP/2019/1646) was granted for a house and garage on plot 3, the northernmost of the three plots. The approved plan showed the redline site boundary leaving from a hammerhead at the end of the paved access, running along the west edge of Plot 2 to the east of a strip of birch trees giving access to the house of Plot 3 to the north. Through the original approval of the layout for the three plots Plot 2 would share the southern part of the access track.
- 2.3 Subsequently the owner of Plot 3 has purchased a strip of land beyond the original western boundary to create a new access to his site directly from the hammerhead and running parallel to the original red line site boundary. The current application is for a change of use of land to garden ground and provision of access to Plot 3. Access up to the hammerhead would remain as existing with the new access running along a former forestry/farm track known as Cedar Avenue. This area has been unsurfaced and appears to have been used for forestry and agricultural access through the original woodland area to a field beyond.
- 2.4 There are a number of trod paths through the woodland in the vicinity and the application site has formed part of this network, linking the access road with the field beyond, and onto other routes through the trees. Following the initial application, which included the full 5m width of the application site within the redline boundary, and would have changed the use of the whole strip into garden ground, the Council has sought an amendment to remove part of the area to the west from the change of use which would have restricted the right of public access across the land. The revised plan shows a 3m wide free draining stone chip driveway accessing the north-west point of Plot 3 with a post and wire fence separating the house plot boundary from the ground

beyond. A strip half a metre wide, remains within the applicant's ownership but outwith the garden ground and pedestrian access could be retained along this strip without impinging on the applicant's garden. A 1m wide strip along the east boundary would be grassed and used to absorb any surface water run-off from the driveway should it arise.

- 2.5 The ground beyond this strip is rough grass and trees with a drainage ditch parallel and further west, there was a mound of earth part way along this area which appeared to have been created from works at the site. To the north there is a steep sided ditch between the path and the field access, this is currently crossed by ad hoc means using a fallen tree trunk. The existing field gate access would be on the north boundary of the extended garden ground with access for walkers shown on the submitted plan to be through a gap in the fence into the field.
- 2.6 An arboricultural assessment plan has been submitted to show existing trees on the site with their root protection areas. This shows that the proposed driveway access into the site can be created without tree loss. A report from arboricultural and environmental consultants notes that two thirds of the original Cedar Ave track has been widened and tarmac laid to provide access to the three plots. The proposal would give access to plot 3 from the northern end of the remaining section of the track, which is currently a rough track with a 1.5m grass verge at the start of the track (north of the tarred road). The access would avoid root protection areas of trees and no trees would be affected by the proposals.
- 2.7 A drainage statement has been supplied by Ramsay and Chalmers which confirms the location of an open ditch in forestry land to the west. The existing land is open and free draining. The proposed driveway design will be constructed in free draining material that will provide a level of treatment. Surface water run-off will shed towards a proposed 1m grass verge on the eastern side of the driveway. They anticipate the existing run-off rates will remain unchanged.

3. Representations

- 3.1 A total of 8 valid representations (8 objections) have been received as defined in the Scheme of Governance. This does not include multiple representations from the same household which equate to 11 letters in total. All issues raised have been considered. The letters raise the following material issues:
- House has an approved access and a large plot, no need to lose more natural land in this area
 - Land was to be left as a wildlife corridor and is used by deer, red squirrels and native animals
 - Used by the community as a walking route to access the field, tracks into woodland and other tracks in Woodlands Park estate.
 - Historic access track which is shown on maps from 1800's
 - Strip of land was not part of original consent

- Plots being built have already removed many walking tracks around the local woodland, blocking off Cedar Ave would almost make the woods inaccessible. Many of the other tracks are not maintained, have deep ditches and unstable muddy ground, this track is invaluable for those with reduced mobility to access the field and tracks beyond
- Main sewer runs through the land and there have been issues with the sewage works in the past
- Further development of a new driveway will increase drainage problems, the area is called 'puddle lane' and has a historic flooding problem which may be pushed elsewhere.
- Further impact on wildlife through loss of woodland
- Access road to other properties is below the plots and has had a huge increase in water (which historically drip fed down the bank into the stream) has caused their bridge to flood four times this year, damaging walls along the stream, drainage needs a solution. Drainage from the plot has destroyed the lower path and causing erosion/tree damage and needs to be resolved.
- Application form incorrectly says no public path/right of way will be affected which is incorrect
- Application form says it is not in an area which floods, which is incorrect. The area is a flood risk and is resulting in downstream flooding
- A metre wide strip at the edge of the driveway would allow level access
- The Cedar Ave track could continue north to the field entrance with access to the property off the road, allowing public access to continue along Cedar Ave
- Access along the track has been restricted by the new owner trying to fence it off and dig it up without permission

4. Consultations

4.1 **Infrastructure Services (Environment Team)** has commented that, previous to current soil movements along Cedar Avenue a firm, dry path provided access to the field at the end of the track through which there are additional trod paths. The proposed change of use of the current access track to garden ground will remove access along the current track. The applicant has amended the red line to leave a strip of land that is in his ownership but will be outwith his garden should the application be approved. This strip of ground, whilst narrow, would allow access alongside the new fence line. However, some work will be required to provide an equivalent firm, flat and dry surface on which people can walk as there is currently some uneven and wet ground along this route. In addition, the point at which the proposed route crosses the ditch is deep and uneven and beyond the ditch the route passes between trees to reach the ditch, if the red line boundary were pulled back to the south-west side of the ditch walkers could cross where the current path crosses. A revised plan was requested showing the ditch, works to make the access route passable and show the fencing only to the driveway side of the access with the other side remaining open. This has been submitted.

4.2 **Infrastructure Services (Roads Development)** has no comments.

- 4.3 **NESBREC** has records of invasive non-native rhododendron, grassland and birch woodland.
- 4.4 **Scottish Forestry** has advised that the Scottish Government's Control of Woodland Removal Policy (COWRP) has a strong presumption in favour of protecting Scotland's woodland resources stating that 'woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits'. The applicant should provide an assessment of the existing or proposed woodland related public benefits for this assessment to be made.
- 4.5 **Scottish Water** has no objection. Subsequent clarification has been received that there are existing Scottish Water assets (a water supply pipe along Cedar Avenue) and the applicant has been advised to discuss further with Scottish Water to establish any potential conflicts between the proposed development and their infrastructure.

5. Relevant Planning Policies

5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long-term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

5.2 Aberdeen City and Shire Strategic Development Plan 2020

The Strategic Development Plan was approved on 12 August 2020.

The purpose of this Plan is to set a clear direction for the future development of the City Region. It sets the strategic framework for investment in jobs, homes and infrastructure over the next 20 years. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as

regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

The Aberdeenshire Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Aberdeen City & Shire SDP 2020 as approved forms part of the Development Plan.

5.3 Aberdeenshire Local Development Plan 2017

Policy P2 Open space and access in new development

Policy C4 Flooding

Policy RD1 Providing suitable services

Policy PR1 Protecting important resources

5.4 Proposed Aberdeenshire Local Development Plan 2020

Aberdeenshire Council on 5 March 2020 resolved to agree the Proposed Aberdeenshire Local Development Plan (LDP) 2020 as the 'settled view of the Council' on what the final adopted content of the LDP 2021 should be. A period during which representations on the Proposed LDP 2020 could be made took place between 25 May and 31 July 2020.

The Proposed LDP 2020 is a material consideration in the determination of planning applications. The Planning Authority must therefore assess what weight it should have in the context of this particular application. The Proposed LDP has been subject to public scrutiny and has now been submitted for Examination by an independent Reporter. Nevertheless, it is considered that the level of weight that should be applied to the Proposed LDP 2020 remains as not significant at this time. The Aberdeenshire LDP 2017 remains the up-to-date LDP for the area and the primary document against which planning applications should be determined until such time as a new LDP for the area is adopted.

5.5 Other Material Considerations

None

6. **Discussion**

- 6.1 The key issues in determining the application are the impact on access of the change of use to garden ground and the creation of a driveway, drainage including flood risk to other properties and tree loss.

Access

- 6.2 Policy P2 Open space and access in new development states that existing and potential public access routes should be protected. If the proposal were part of a larger scale residential development it would be reasonable to seek improvements to the access route, however the proposal is for the extension of garden ground for a single house and the solution needs to be proportional. The existing trod paths through the original and existing woodland form an informal network of walking routes around the area, none are formal paths or public rights of way but most appear relatively well used by the community. The nature of the routes are narrow, uneven tracks weaving through woodland, Cedar Ave was originally the widest access since it served as a farm and forestry track and had been used as part of the overall walking routes.
- 6.3 The proposal would result in the loss of the existing access route over around a third of the length of the Cedar Ave track which would become part of the garden ground for Plot 3. The ground would therefore not be subject to the provisions of the 2003 Land Reform Act which allows a right of responsible access but excludes private gardens: 'houses are allowed sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house or place and to ensure their enjoyment of that house or place is not reasonably disturbed'
- 6.4 Revised plans have been submitted to show that the extent of the fenced area would leave a 0.5m wide strip of land along the west edge, still on the applicant's land but outwith the change of use to garden ground. This strip, combined with the existing woodland edge beyond the applicant's land, would retain a route for a trod path, linking to other such trods in the wider woodland and to the field beyond. The existing route is wider and leads to access to the field in the north through a field gate which has currently been removed but would be replaced. There is a deep ditch to the north which is currently crossed by a tree trunk someone has placed over the ditch to get access, a crossing of the ditch would still be required and possible by similar means. The plan shows that stockpiled materials on the new route would be removed to return to a natural surface, this can be conditioned.
- 6.5 Policy P2 requires protection of existing and potential public access routes, the amended proposal leaves land outwith the change of use proposal which would be available for continued public access. This strip of land is narrow but comparable in width to existing trod routes through the woodland with scope for people to access the route in addition to the woodland edge which varies in width along the west edge of the application site. The proposal would retain an access route for people to use and link with other similar paths throughout the woodland, it is considered to comply with Policy P2 Open space and access in new development.
- 6.6 Policy RD1 refers to access to development which states all developments must include provision for access by wheelchair users etc. This relates to the development site itself and not to the wider area, in this instance the development site would be accessible as required under this policy and the path network in the wider area would retain access at an equivalent standard

to the current routes. New accesses must also cause minimal impact on the character of the site, in this case the farm/forest track would be re-surfaced as a gravel driveway without loss of nearby trees, and it is considered to retain the character of the site in accordance with Policy RD1 Providing suitable services.

Drainage and flood risk

- 6.7 The site is not in a flood risk area and there are no records of surface water flooding in the immediate vicinity. The track is known locally as 'Puddle Lane,' surface water may lie on the compacted track but there are no historic flood records. However, there have been on-going complaints about water flowing from the Plot 3 development site, during construction water has flowed down the wooded slope to the east affecting walking routes through the woods and adding to water flows in the watercourse which joins the Burn of Durris flowing past Apple Cottage and Paddock Cottage. Both the minor watercourse and Burn of Durris have previous flood records for surface water flooding and Burn of Durris has low to medium flood risk records. Flood water affected the access road to these properties last year. The application site is a significant distance from the complainant's properties and the details submitted show an internally drained driveway with a grassed strip to the east between the site and the applicant's plot where any excess water would be absorbed. The proposal is small scale and would not add any significant surface water run-off beyond the site. A flood risk assessment would not be sought in this instance due to the scale of the proposal and the details in the drainage report which will be conditioned to ensure the driveway is installed in accordance with the report. The proposal is considered to comply with Policy C4 Flooding.
- 6.8 Policy PR1 Protecting important resources states that development resulting in the loss of or serious damage to, trees and woodlands of significant ecological, recreational, historical, landscape value will not normally be permitted. Consent for the 3 house plots required compensatory planting for the felled plantation woodland with 6000m² planted with 1525 native trees at a site around 0.5km from the development site, this has been provided and agreed. Wildlife corridors were agreed between each house plot to ensure tree belts were included to link existing woodland to the east and west, woodland remains to the west of the proposed access. It has been confirmed that no trees would be lost to facilitate this proposal which complies with Policy PR1.
- 6.9 In relation to points raised in the representations and not addressed above, the ground has not been natural land in so far as it has been an unsurfaced access track through a previous plantation woodland. Scottish Water has confirmed that there is a water supply pipe along the east edge of Cedar Ave, the applicant is aware of this, and an informative will be added to ensure this can be adequately addressed.
- 6.10 Restrictions to public access have occurred during construction of plot 3 with the Cedar Ave track fenced off. In consultation with Planning Enforcement and the Council's Access Officer the fencing was removed.

- 6.11 In summary, the proposal has raised significant local concerns amongst people fearing their access to existing woodland would be restricted and that the proposal would lead to further flood risk at property to the north-east of the site. These are understandable concerns, however, alterations to the plans now provide a strip of land beyond the fenced garden where access can be taken to a standard similar to the other trod routes without conflicting with the owners right to privacy. The proposed drive would be internally drained and would not add to flood risk beyond the site. No trees would be lost to the proposal. Whilst recognising the concerns of objectors it is considered that the revised plans provide a suitable access route without impacts on the natural environment or flood risk.

7. Area Implications

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

8. Implications and Risk

- 8.1 An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.

9. Sustainability Implications

- 9.1 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

10. Departures, Notifications and Referrals

10.1 Strategic Development Plan Departures

None

10.2 Local Development Plan Departures

None

- 10.3 The application is not a Departure from the Local Development Plan or Strategic Development Plan and no departure procedures apply.

- 10.4 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.
- 10.5 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

11. Recommendation

11.1 GRANT Full Planning Permission subject to the following condition:-

01. Prior to the commencement of works the stockpile of material to the west shall be removed to create a level, firm and dry surface for the access route.

Reason: In order to ensure a suitable access route is available for the continued use of walkers.

11.2 Reason for Decision

The planning authority considers that the application is for a development that is in accordance with the Aberdeenshire Local Development Plan 2017. The proposed change of use and creation of a driveway access would not result in the loss of trees, can be adequately drained within the site without adding to flood risk elsewhere and will provide a route for walkers to continue to access the wider network of woodland routes. It complies with Policy P2 Open space and access in new development, Policy C4 Flooding, Policy RD1 Providing suitable services and Policy PR1 Protecting important resources.

Alan Wood
Director of Infrastructure Services

Author of Report: Jan Regulski
Report Date: 10 August 2021