

## Kincardine & Mearns Area Committee Report 23 August 2022

Reference No: APP/2021/2892

**Application under Section 42 For Erection of Dwellinghouse without Compliance with Condition 3 (Tree Management) of Planning Permission in Principle Reference APP/2017/0433 at Land Adjacent to Kirk House, Crosspoles, Marykirk, Laurencekirk, Aberdeenshire, AB30 1PQ**

**Applicant:** Mr Robert Young, Kirk House, Crosspoles, Marykirk, Aberdeenshire, AB30 1PQ  
**Agent:** John D. Crawford Ltd, 72 New Wynd, Montrose, DD10 8RF

Grid Ref: E:367129 N:767692  
Ward No. and Name: W19 - Mearns  
Application Type: Application under Section 42  
Representations: 5  
Consultations: 2  
Relevant Proposals: Aberdeenshire Local Development Plan  
Map  
Designations: Rural Housing Market Areas  
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.3.1g of Part 2C Planning Delegations of the Scheme of Governance as there is an unresolved objection from a consultee.
- 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 site is located within the boundaries of a site for which planning permission in principle was granted for the erection of a dwelling house (APP/2017/0433). The original proposal included the siting of a drainage mound within an area of woodland on the opposite side of the access track.
- 2.2 This application seeks non-compliance with condition 3 of the planning permission under section 42. The condition is as follows:

*The tree management scheme required under Condition 1(d) shall include the following requirements:*

*The submission of a tree management scheme providing details of appropriate proposals for the care and management of all trees to be retained and any new areas of planting. The scheme should include:*

- a) The location of replacement tree planting.*
- b) A schedule of planting to comprise species, plant sizes and proposed numbers and density and*
- c) A programme for the implementation, completion and subsequent management of the proposed replacement tree planting.*

*The replacement tree planting shall be carried out in complete accordance with the approved scheme and any planting which, within a period of 5 years from the completion of the compensatory tree planting, in the opinion of the planning authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.*

*Reason: In order to replace trees lost to development, including the proposed drainage system and preserve the character and visual amenity of the area.*

- 2.3 The application for approval of all the matters specified in condition 1 of the planning permission in principle was approved under delegated powers under planning reference APP/2021/2859.

### 3. Representations

3.1 A total of five valid representation (objections) have been received as defined in the Scheme of Governance. These letters raise the following material consideration:

- The application site encompasses an existing right of way which should be protected.

### 4. Consultations

#### Internal

4.1 **Environment and Infrastructure Services (Natural Heritage)** has commented that if the woodland remained in the domestic curtilage of the property, a condition requiring a submission and implementation of a woodland management plan would be required.

#### External

4.2 **Mearns Community Council** had originally objected on the basis that the right of way was incorporated into the application site boundaries and not shown on the drawing. Following changes to the site boundaries to exclude the woodland and the identification of the right of way in accordance with the drawing approved under planning permission reference APP/2004/4461, the Community Council advised that it was happy to withdraw its objection on condition that the right of way remained unaffected before subsequently re-instating its objection.

### 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 (SDP) 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 PR1: Protecting important resources

Policy P2: Open space and access in new development

## 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 2022 should be. 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 Reporter's report of Examination of the Proposed LDP 2020 has now been published (24 June 2022). Notwithstanding, there is currently no authority to use the Proposed Local Development plan as a substitute for the Local Development Plan 2017. The weight that can be given to the phrase "settled view of the Council" can only be interpreted in the context of the publication of the Proposed Local Development Plan 2020 (March 2020). Even with the certainty associated with the Reporters' Report it still remains only a material consideration in determining planning applications. However, consideration will be given on a case by case basis where the weight of the Reporter's Report should be given overwhelming significant weight when it is most advantageous to the applicant's proposals. SPP Paragraph 34 is of associated relevance.

The Scheme of Governance reserves determination of planning policy to Full Council for resolution. As such until the Proposed Local Development Plan 2020 has been formally adopted by Full Council (as LDP 2022) can this be considered as the Council's "settled view".

It should be borne in mind that the LDP has been written to be implemented as a whole and not the selective use of agreeable parts.

On the 18 April with reference to the legislation the LDP 2017 becomes technically 'out of date'. Notwithstanding the Aberdeenshire LDP 2017 remains the primary document against which planning applications should be determined until such time as a new LDP for the area is adopted. Currently Scottish Planning Policy (SPP) deals with this circumstance at Paragraphs 32 to 34. The policies of the LDP 2017 are reflective of the policy position within SPP. Both SPP and the National Planning Framework 3 are confirmed as significant influences on the content of the plan, as confirmed within Section 2 – 'Influences of the Plan'. In summary, when a development plan is more than five years old the presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits. All of these matters however are already embedded within the policies of the Local Development Plan 2017 and deemed robust in their consideration.

#### 5.5 Other Material Considerations

None

### 6. Discussion

6.1 Paragraph 33 of Scottish Planning Policy (SPP) states that where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. This must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits.

6.2 The key issues relating to this application are:

- Development principle
- Impact on trees
- Impact on right of way

#### Development principle

6.3 As stated in section 1, the principle of development was established through the grant of planning permission in principle for the erection of a dwelling house and associated drainage infrastructure.

### Impact on trees

- 6.4 Since the planning permission in principle was granted, an amended drainage solution not requiring any encroachment into the woodland has been designed. The woodland was originally included in the site boundary. However, it has been removed and no longer forms part of the proposed domestic curtilage for which an application for approval of matters specified in condition 1 has been granted under reference APP/2021/2859. As advised by Environment and Infrastructure (Natural Heritage) the removal of the condition would have been difficult to support had the woodland remained within the proposed domestic curtilage as approved in principle. By removing the woodland from the site boundaries, the trees will be protected from loss or damage in full compliance with Policy PR1: Protecting important resources.
- 6.5 The removal of the woodland from the approved domestic curtilage associated with the new dwelling house negates the need for the condition and therefore the proposal can be supported on the grounds that the no adverse impact would occur on the woodland as a result of the proposed new dwelling house in accordance with Policy PR1: Protecting important resources.

### Impact on the right of way

- 6.5 As highlighted, in reference to the potential impact on the right of way raised through letters of representation, the site boundaries have been amended and the right of way is no longer included within the boundaries of the application site. Although part of the shared access has been included in the application site, this was done for validation purposes (requirement to include the access in the application site) and no works that would affect the right of way are being proposed.
- 6.6 In terms of the planning history related to the right of way, a planning condition was attached to a planning application that was granted in 2004 (APP/2004/4461) for a change of use of a workshop into a dwelling house. This condition states as follows:
- *That the development hereby approved shall not be occupied until a 2.0 metre wide public footpath in the location shown on the approved plans is designed and constructed to the satisfaction of the Planning Authority. Such a path shall be maintained in perpetuity by the owner(s) of Crosspoles Church.*
- 6.7 A small section of path was clearly identified on the approved drawings. The applicant amended the plan to show the section of path identified in the approved plan. This section is not within the application site boundary and therefore, will be unaffected by the development. The Planning Service obtained a copy of the 'disposition of land' drawing for the application site which clearly shows that the road was not included in the sale. As such, the Planning Service considers that the application is fully compliant with Policy

P2: Open space and access in new development, which seeks to protect existing and potential public access routes from development.

- 6.8 The Planning Service also obtained a 'disposition of land' drawing identifying the land associated with the 2004 application. This encompasses a section of the right of way, which corresponds to the one identified in the approved block plan. This strongly suggests that the sole purpose of the condition attached of that consent was to ensure that access to the A90 was improved and maintained. To expect the owner of Crosspole Church to provide a 2m wide footpath all the way to the junction with the public road would have been unreasonable. Ultimately, any alleged non-compliance with the condition is not something that could be considered under this planning application.

### Conclusion

- 6.9 The policies contained in the Local Development Plan 2017 remain compliant with the principles of sustainable development as guided by the SPP and therefore provide an appropriate basis for the determination of this application.
- 6.10 The proposal, in excluding the trees from the application site, would contribute to the protection of natural heritage and towards sustainable development. This carries significant material weight lending itself to an approval.
- 6.11 The removal of the woodland from the approved domestic curtilage associated with the new dwelling house approved under planning reference APP/2017/0433 negates the need for the condition and therefore the proposal can be supported on the grounds that no adverse impact would occur on the woodland as a result of the proposed new dwelling house in accordance with Policy PR1: Protecting important resources.
- 6.12 In assessing the proposed development against the wider policies of SPP and the LDP 2017 and any other material considerations, there were no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal.

## **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 integrated impact assessment is not required because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 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.
- 8.4 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.

## 9. Departures, Notifications and Referrals

### 9.1 Strategic Development Plan Departures

None

### 9.2 Local Development Plan Departures

None

- 9.3 The application is not a Departure from the Local Development Plan or Strategic Development Plan and no departure procedures apply.
- 9.4 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.
- 9.5 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.

## 10. Recommendation

### 10.1 **GRANT subject to the following conditions:-**

01. Details of the specified matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.

Specified matters:

- a) Full details of the layout and siting of the proposed development, including any ancillary buildings;
- b) Full details of the external appearance and finishing materials of the proposed development;

- c) Full details of the proposed foul and surface water drainage certification and maintenance scheme.
- d) A desk top noise assessment.

Reason: Permission for the development has been granted in principle only and subsequent approval is required for these matters in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

02. The drainage details required under Condition 1(c) shall include the following requirements:

The submission of a detailed report to confirm that the soakaway location and design will be effective in all-weather conditions and will not contaminate water supplies. The report should include a maintenance scheme. The report must be certified by a Chartered Civil or Structural Engineer, or similarly qualified person who is indemnified against professional risk. The certificate should be signed and dated. The foul and surface water drainage systems shall be permanently retained thereafter and maintained in accordance with the approved scheme.

Reason: In order to ensure that adequate drainage facilities are provided, retained, maintained and to provide clarity of maintenance responsibilities, in the interests of the amenity of the area.

03. The noise assessment required under Condition 1(d) shall include the following requirements:

- a) A desk top noise assessment to identify any sufficient noise attenuation measures that may be required to mitigate road traffic noise from the A90 trunk road.

Reason: To ensure the implementation of a satisfactory means of noise attenuation in the interests of the residential amenities of the occupiers of the proposed development.

04. No works in connection with the permission hereby granted shall commence and the access hereby approved shall not be brought into use unless visibility of 2.4 metres by 59 metres along the channel line of the public road has been provided in accordance with the Council's Standards for Road Construction Consent and Adoption. The visibility splays shall be physically formed on the ground and any existing fences, walls, hedges or other means of enclosure or obstructions within the splays shall be removed and relocated out with the splays in accordance with the approved plans. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility splays so formed.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.

05. Prior to occupancy of the development, parking spaces, surfaced in hard standing materials shall be provided within the site in accordance with the Council's Car Parking Standards. Once provided, all parking spaces shall thereafter be permanently retained as such.

Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.

06. That the dwellinghouse hereby approved shall not be constructed unless an Energy Statement applicable to that dwellinghouse has been submitted to and approved in writing by the planning authority. The Energy Statement shall include the following items:

- a) Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development.
- b) Calculations using the SAP or SBEM methods, which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with the Council's Supplementary Planning Guidance on Carbon Neutrality in New Developments.

The development hereby approved shall not be occupied unless it has been carried out in full accordance with the approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

Reason: To ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy and the Council's Supplementary Planning Guidance - Carbon Neutrality in New Developments.

## 10.2 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 removal of the woodland from the approved domestic curtilage associated with the new dwelling house (ref APP/2017/0433) negates the need for the condition and therefore the proposal can be supported on the basis that the no adverse impact would occur on the woodland as a result of the proposed new dwelling house in accordance with Policy PR1: Protecting important.

The presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits.

The proposed development accords with the Scottish Planning Policy principles of sustainable development. This carries significant material weight lending itself to an approval.

In assessing the proposed development there were no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal.

**Alan Wood**  
**Director of Environment and Infrastructure Services**  
**Author of Report: Aude Chaiban**  
**Report Date: 11 August 2022**

# Comments for Planning Application APP/2021/2892

## Application Summary

Application Number: APP/2021/2892

Address: Land Adjacent To Kirk House Crosspoles Marykirk Laurencekirk Aberdeenshire AB30 1PQ

Proposal: Erection of Dwellinghouse without Compliance with Condition 3 (Tree Management) of Planning Permission in Principle Reference APP/2017/0433

Case Officer: Aude Chaiban

## Customer Details

Name: Mrs Susie Brown

Address: Lutherbank House Auchenblae Laurencekirk AB30 1XP

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This application compromises a right of way and should not be allowed.

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Proposal: Erection of Dwellinghouse without Compliance with Condition 3 (Tree Management) of Planning Permission in Principle Reference APP/2017/0433

Case Officer: Aude Chaiban

## Customer Details

Name: Mrs Carol Medlock

Address: Mains of Haulkerton Laurencekirk AB30 1EL

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:A house can not and should not be built over a RIGHTS of WAY track.

This is an important track that has been there for many years. It is vital and has been used, until recently, regularly.

This application should be carefully considered, a RIGHT of WAY is of legal importance

**From:** [REDACTED]  
**To:** [Planning Online](#)  
**Subject:** Reference APP/2017/0433  
**Date:** 27 January 2022 14:54:26

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Hello,

I would like to object to the above development. The proposed development footprint encompasses land (Public access road and right of way) which is not owned by the applicant(s), they have already blocked the old access to the B974 Luthermuir road which forces pedestrians and cyclists onto the A90 for a longer period

Martin Raethorn  
Crosspoles Croft,  
Marykirk,  
AB30 1PQ



**From:** [REDACTED]  
**To:** [Planning Online](#)  
**Subject:** Planning Application : APP/2021/2892  
**Date:** 13 February 2022 21:28:21

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To whom it may concern.

I write on behalf of my wife, Marion Robson and myself regarding the above planning application.

I note that the site plan crosses the existing right of way and includes part of the woodland on the south side of the right of way.

As cyclists we regularly use this path to access the pedestrian crossing of the A90 at Crosspoles.

My wife suffered a stroke about 4 years ago and since then has been unable to drive. She has made a very good recovery but requires to follow an extensive exercise regime. She has an e-trike which gives her access to the countryside and is able to visit our family at Balmakewan by using this right of way and the associated pedestrian crossing.

There is no mention of the path on the site plan and we are concerned that the footprint of the proposed house crosses the existing path.

We seek reassurance that the current safe access route to the Crosspoles will be maintained through the proposed development.

You will appreciate that safe crossing points on the A90 for cyclists and pedestrians are at a premium between Northwaterbridge and Stonehaven.

Yours sincerely,

Michael Robson.

Contact: 1 Reed Crescent, Laurencekirk ; tel [REDACTED]

Sent from [Mail](#) for Windows

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Proposal: Erection of Dwellinghouse without Compliance with Condition 3 (Tree Management) of Planning Permission in Principle Reference APP/2017/0433

Case Officer: Aude Chaiban

## Customer Details

Name: Mr Christopher Rushbridge

Address: North Esk House Marykirk Laurencekirk AB30 1UT

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: There is an old right of way which crosses the area of the application and no reference is made to this. It follows the route of what was the old Marykirk road, prior to the realignment of the crossroads.