

<b>APPEAL DECISION (DPEA)</b>
<b>Appeal Reference</b>
PPA-110-2356
<b>Planning Reference</b>
APP/2017/2430
<b>Planning Proposal</b>
Erection of 1.8m High Fence (Retrospective)
<b>Summary of Decision</b>
<p>Appeal dismissed.</p> <p>Reporter stated that during the site inspection they exited from the parking area in both forward and reverse gears to observe the effects of the fence on visibility and road safety. They observed that in both instances visibility onto the road to the south of the access was very significantly restricted by the fence. Difficulty was greatest and most dangerous in reverse gear.</p> <p>A clear view of approaching traffic was only established when the majority of the reporters car was positioned in the northbound carriageway.</p> <p>It was found that manoeuvring onto the road from the curtilage of the house presents a significant danger to passing motorists and pedestrians. Pedestrians, and especially children, who leave the curtilage of the house may have little, if any prior awareness of approaching traffic.</p> <p>While the applicant has stated that the fence is a necessary form of protection from passing heavy traffic (and any debris they may deposit) significantly less weight can be attached to these concerns when seen in the context of the much more significant danger caused by the obstruction to visibility due to the fence.</p> <p>The reporter was not satisfied that the proposal would comply with Policy P1 Layout, siting and design because it would have a significant impact on road safety.</p>
<b>Policy Issues</b>
Proposed development is not compliant with Policy P1 Layout, siting and design.

<b>Additional Points</b>
N/A
<b>Actions</b>
Note Decision

Planning and Environmental Appeals Division

## Appeal Decision Notice

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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2356
- Site address: Cross of Jackston, by Rothienorman, Aberdeenshire, AB51 8UT
- Appeal by Stuart Brown against the decision by Aberdeenshire Council
- Application for planning permission APP/2017/2430 dated 21 September 2017 refused by notice dated 19 January 2018
- The development proposed: Erection of a 1.8 m high fence (retrospective)
- Date of site visit by Reporter: 31 May 2018

Date of appeal decision: 18 June 2018

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### Decision

I dismiss the appeal and refuse planning permission.

### Preliminary Matter

The council's committee report of 7 December 2017 at paragraph 4.1, in referring to the Infrastructure Service's objection, cites a location at Westertown Farm, south-east of Cross of Jackston. This has been challenged by the appellant in his statement of appeal. I am however satisfied that this is a typographical error and that the reference ought to have referred to the appeal site, as confirmed in Infrastructure Services' consultation response of 27 September 2017.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Aberdeen City and Shire Strategic Development Plan 2014 and the Aberdeenshire Local Development Plan 2017 (the 2017 Plan). No specific policies within the strategic development plan have been brought to my attention and my decision is based upon policies contained in the 2017 Plan.
2. Having regard to the provisions of the development plan the main issue in this appeal is whether the fence would impact on road safety due to there being insufficient visibility splays.
3. The Cross of Jackston comprises a cluster of some 10 dwellinghouses in a rural part of Formartine, Aberdeenshire. The vertically boarded timber fence subject to this appeal is



broadly in line with an earlier fence of a lower height and is set back from the carriageway of the road by less than one metre.

### **The Development Plan**

4. Section 14 of the 2017 Plan addresses the layout, siting and design of new development and policy P1 'Layout, Siting and Design' sets out six qualities of successful places that development must demonstrate if it is to be approved.

5. By virtue of Class 7(2)(a) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, planning permission is required for the erection of a fence within 20 metres of a road if its height exceeds 1 metre above ground level. Unlike the now removed leylandii hedge that grew on the north-eastern boundary of the site, and which was outwith the scope of planning control, the erection of the 1.8 metre fence comprises development. Policy P1 of the 2017 Plan therefore applies.

6. The second bullet point of policy P1 requires, amongst other things, that new development is safe. It has not been argued by the council that the fence has any adverse visual impact and I am satisfied that, although strident in its current unweathered appearance, it does not impact to an unacceptable degree on the visual qualities of the settlement and so accords with the first and third bullet points of policy P1. I find that the other 3 criteria in policy P1 are not relevant to this appeal. Accordingly, in order for the development to comply with the 2017 Plan it must be safe, and thus road safety is the paramount consideration in this case.

### The impact of the proposal on road safety

7. Although serving a scattered rural area, nevertheless the public road at Cross of Jackston was, during my site inspection, regularly used by a mix of vehicles including cars, agricultural traffic and the occasional heavy goods vehicle. I also observed several persons walking on the sides of the carriageway, necessitated by the absence of footways and the unsurfaced and narrow verge on either side of the road. The appellant acknowledges that there are 'many very large vehicles' which pass the appeal site, including agricultural and quarry traffic. Significantly, the speed limit of the road is de-restricted even though it passes through the settlement, meaning that drivers may lawfully travel at speeds reaching 60mph as they approach and pass the appeal site.

8. Two off-street car parking spaces are provided within the curtilage of the dwelling. Despite the substantial garden ground there is nevertheless no provision for drivers entering the parking spaces to readily manoeuvre and leave the curtilage in forward gear, requiring drivers to exit by reversing onto the derestricted road.

9. During my site inspection I exited from the parking area in both forward and reverse gears to observe, at first-hand, the effects of the fence on visibility and hence road safety. It was apparent to me that in both instances my visibility onto the road to the south of the access was very significantly restricted by the fence and this impediment was exacerbated by the horizontal alignment of the road, the absence of a footway and the proximity of the fence to the carriageway. This difficulty was greatest, and indeed most dangerous, when I entered the road in reverse gear. At the point when I had a clear view of approaching

northbound traffic much of my car was positioned in the northbound carriageway. I find that manoeuvring onto the road from the curtilage of the house presents a significant danger to passing motorists and pedestrians, contrary to the interests of road safety. Equally pedestrians, and especially children, who leave the curtilage of the house may have little, if any, prior awareness of approaching northbound traffic.

10. I am mindful of the appellant's assertion that the 1.8 metre fence has been erected in the same position as a previous fence of lesser height. It is suggested that misleading information was provided in the council's reporting of the case insofar as the horizontal position of the fence is concerned. In this regard I have studied closely the photographic evidence provided by the appellant and I also note the open character of the garden caused by the removal of the leylandii hedge.

11. The appellant regards the replacement fence as necessary for protection from what he has described as heavy traffic, following the removal of the leylandii hedge. It is suggested that the 1.8 metre fence affords screening and protection from noise and material falling from vehicles and is, in any event, of a lower height than the earlier hedge, thereby improving visibility. The two representations received in support of the fence point to its advantages by providing privacy, shelter and screening and the removal of what is described as an unsightly overgrown hedge.

12. While I appreciate that persons in the garden could be vulnerable to noise and fallen debris from vehicles I consider that significantly less weight can be attached to these concerns, and the matters echoed in the representations, when seen in the context of the much more significant danger caused by the obstruction to visibility southwards due to the fence. Although the former leylandii hedge may well have impacted on drivers' visibility that obstruction, unlike the 1.8 metre fence, was not within the scope of planning control.

13. Overall, I consider that little weight can be attached to any discrepancy between the original fence line and the precise location of the 1.8 metre fence in its current position. Indeed, regardless of the disputed position of the fence, and any protection and screening that it may afford, I find that central to the determination of the appeal is the impact of the fence on road safety. In this crucial respect, the development is contrary to the requirements of policy P1.

14. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Chris Norman*  
Reporter