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Decision by Karen Heywood, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-100-2075
- Site address: 22 Kinaldie Crescent, Aberdeen, AB15 8HX
- Appeal by Mr Neil Greig against the decision by Aberdeen City Council
- Application for planning permission dated 27 February 2015, reference P150311, refused by notice dated 8 June 2016
- The development proposed: erection of new dwelling house and associated works
- Date of site visit by Reporter: 5 October 2016

Date of appeal decision: 2 February 2017

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## Decision

I dismiss the appeal and refuse planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the main issues in this appeal are the change in the use of the area of public open space off Kemnay Place and the loss of four trees along the existing boundary between the garden area at 22 Kinaldie Crescent and the open space.
2. The development plan context has changed since the appeal was submitted, as the council adopted a new local development plan on 20 January 2017. The policies it contains that are relevant to the proposed development are similar to those of the previous plan.
3. The proposed house would be constructed in the rear and side garden area of the house at 22 Kinaldie Crescent. Vehicular access would be taken from Kemnay Crescent at the south eastern end of the plot, via an area of grassed public open space associated with the houses in Kemnay Crescent and requiring the removal of four trees. This area of open space would contain the gravelled driveway access.
4. There are three areas of open space associated with the housing development at Kemnay Place. Of these the council considers that the area of open space that would be affected by the proposed development makes the least significant contribution to the character and amenity of the area. This is because this area is peripherally sited with no through route for pedestrians, whereas one of the other areas provides the pedestrian path link from Kemnay Place to the core path route around the Walker Dam. The other open



space area is more prominently sited at the heart of the development and is overlooked by adjacent properties. In addition, the affected area of open space is less than half the size of the other areas, at approximately 200 square metres compared to 440 and 590 square metres.

5. However, the council also points out that this smaller area of soft landscaping incorporates a row of alder and rowan trees along its northern edge and provides a pleasant green backdrop on entry to Kemnay Place via Kildrummy Road, contributing positively to the character and amenity of the area. Notwithstanding its limited size, the council considers that this area of open space is 'valuable' for the purposes of assessment against the previous local development plan policy H1. The council also draws attention to the fact that many of the representations from local people concerned about the proposed development make reference to the loss of this area of open space, concluding that it appears that the area is very much valued locally.

6. I agree with the council's analysis of the contribution the open space area makes to character and amenity in Kemnay Place. While I am not entirely convinced this area is as well used for active recreation as adjacent residents would have me believe, it is the case that the proposed development would effectively change the use of the area from public open space to what is tantamount to private garden ground. I acknowledge that the open context of the area would remain. However, even though there would be no structure erected on the area of open space, it would be a driveway associated with the proposed house.

7. During the processing of the planning application a council planning officer acknowledged that the open space would still be available to members of the public. Be that as it may, it is not likely that people living in Kemnay Place would use what would appear to be part of the new house's garden for informal recreation. I believe the construction of the driveway through the area would change its character and that it would be perceived to be part of the garden area associated with the proposed house.

8. Four of the trees along the boundary between the open space and the current garden area of the house at 22 Kinaldie Crescent would be felled to allow for the construction of the driveway to the proposed house. The appellant's tree survey considers these to be Category C – trees of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter below 150 mm. The survey describes them as trees with no material conservation or other cultural value.

9. I agree that these four trees are, individually, not good specimen trees. They are close to each other and have suppressed canopies as a result. However, I do not agree with the conclusion expressed in the survey that they are of no material conservation or other cultural value. Together with the trees on either side of the area of open space, these trees form a pleasant backdrop to the grassed open space area when approaching along Kemnay Place from its junction with Kildrummy Road. Their loss would create a noticeable gap in this group of trees. Having said that, had the loss of these trees been the only detrimental impact of the proposed development I do not consider that would have been sufficient alone to withhold planning permission.

10. In my view, the change in the use of the area from public open space to what would appear to be private garden ground when considered together with the loss of the four trees would have an unacceptable impact on the character and amenity of the surrounding area. It would also result in the de facto loss of an area of open space which is valued locally. For these reasons, I conclude that the proposed development would conflict with local development plan policy H1 – Residential Areas, which is in similar terms to policy H1 in the superseded plan.

11. The council referred to a number of policies of the previous local development plan in its reasons for refusal. I have considered the equivalent policies in the new local development plan. I do not have any concerns in relation to policy D1, which addresses similar issues as the predecessor policy; the proposed house is an acceptable design for this residential area, it is now proposed to be sited far enough away from the mature trees on the boundaries and the plot is large enough to provide both the proposed and existing houses with sufficient amenity space. I do not consider that the loss of the trees alone is sufficiently serious to lead to a conflict with policy NE5 (similar to the previous policy) and the protection of the other trees during the construction period could be controlled by planning conditions. The proposed house would be visible from the Walker Dam core path, but then so are many other houses which back onto it. There would be no other impact on the Walker Dam site and, therefore, no issue with policy NE8, which addresses the same issues as the predecessor policy but contains more detail.

12. Despite the lack of conflict with many of the local development plan policies, I consider that the conflict with policy H1 is sufficient to conclude that the proposed development does not accord overall with the relevant provisions of the development plan. I have identified no material considerations which would justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Karen Heywood*

Assistant Chief Reporter