

From: Foi Enquiries
Sent: 19 December 2018 08:09
To: [REDACTED]
Subject: EIR-18-1574 - Planning Permission
Attachments: V2 - Further Information - Right to Review & Appeal.pdf; Stage_2_Complaint_Redacted.pdf

Dear [REDACTED],

Thank you for your information request of 19 November 2018. Aberdeen City Council (ACC) has completed the necessary search for the information requested. Our response is now detailed below.

Under FOI, I would like to request access to recorded information which explains/justifies why planning permission was granted for an extension/development at 10 Ashley Park North Aberdeen. The Planning Permission reference number is 170613 / DPP.

Please find enclosed the document in relation to a complaint raised by Cllr Martin Greig on behalf of a member of public. Please note the Report of Handling contains an assessment of the application against the relevant Local Plan Policies and Supplementary Guidance is available through the following link:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OQK9GHBZL4400>

As the **recorded information which explains/justifies why planning permission was granted for an extension/development at 10 Ashley Park North Aberdeen** is otherwise accessible through the Council website, it is exempt from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby gives notice that we are refusing your request under the terms of Regulation 6(1)(b) - Information Already Publicly Available - of the EIRs.

ACC is unable to provide you with information on **name and address of complainant** under the Freedom of Information (Scotland) Act 2002 (FOISA) or the Environmental Information (Scotland) Regulations 2004 (EIRs) as it is excepted from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby gives notice that we are refusing this part of your request under the terms of Regulation 11(1) – Personal data of which the applicant is the data subject - of the EIRs.

Please note that the names of ACC Officers who are below Chief Officer level have been redacted (blacked out) from the attached document. This is because ACC considers that this information is excepted from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby give notice that we are refusing your request under the terms of Regulation 11(2) in conjunction with 11(3)(a)(i) – Personal Information - of the EIRs.

In making this decision ACC considered the following points:

ACC is of the opinion that Regulation 11(2) applies to the information specified above as the information in question is personal information relating to living individuals, of which the applicant is not the data subject.

ACC is of the opinion that Regulation 11(3)(a)(i) applies, as we consider that disclosure of this information would be a breach of the 'lawfulness, fairness and transparency' principle. These individuals have not consented to the disclosure of this information and ACC does not consider that they would expect ACC to release this information about them into the public domain under the FOISA.

What is the minimum size of the " sufficient remaining garden ground " as we do think the rear garden area at 10 Ashley

Park North now reflects what is shown in Section 3.1.4 page 5 of the Supplementary Guidance

The Supplementary Guidance for Householder Development does not contain any exact dimensions as to the amount of rear garden ground that should be retained after development, either in terms of area or distance to mutual boundaries, other than a general principle that "No more than 50% of the front or rear curtilage shall be covered by development". The assessment of the application in terms of site coverage is covered in the Report of Handling as well as in the response to the complaint raised by Councillor Greig.

How was Planning Permission granted for 10 Ashley Park North whereas Planning Permission was refused for 81 Brighton Place Aberdeen?

The reasons for refusal of this application are detailed in the Report of Handling and the Decision Notice, available through the following link:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?keyVal=P9YN57BZM7T00&activeTab=summary>

As the **how was Planning Permission granted for 10 Ashley Park North whereas Planning Permission was refused for 81 Brighton Place Aberdeen** is otherwise accessible through the Council website, it is exempt from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby gives notice that we are refusing your request under the terms of Regulation 6(1)(b) - Information Already Publicly Available - of the EIRs.

We hope this helps with your request.

Yours sincerely,

Grant Webster
Access to Information Officer

INFORMATION ABOUT THE HANDLING OF YOUR REQUEST

As the information which you requested is environmental information, as defined under Regulation 2(1) of the Environmental Information (Scotland) Regulations 2004 (the EIRs), ACC considered that it was exempt from release through FOISA, and must therefore give you notice that we are refusing your request under Section 39(2) of FOISA (Freedom of Information (Scotland) Act 2002). However, you have a separate right to access the information which you have requested under Regulation 5 of the EIRs, under which ACC has handled your request. Please refer to the attached PDF for more information about your rights under the EIRs.



Grant Webster | Access to Information Officer

Aberdeen City Council | Access to Information Team | Customer Feedback | Customer
Marischal College | 3rd Floor | Broad Street | Aberdeen | AB10 1AQ

Dial: 01224 522166

www.aberdeencity.gov.uk | Twitter: @AberdeenCC | Facebook.com/AberdeenCC

Your Ref. Com045051
Our Ref.
Contact Customer Feedback Team
Email Customerfeedback@aberdeencity.gov.uk
Direct Dial 01224 523058



ABERDEEN
CITY COUNCIL

29 May 2018



Aberdeen City Council
Marischal College
Broad Street
Aberdeen AB10 1FY

www.aberdeencity.gov.uk

Dear [REDACTED],

Complaint regarding your dissatisfaction with the level of flexibility applied on the planning permission of 10 Ashley Park North

Thank you for your complaint lodged on your behalf by Councillor Martin Greig on 3 May 2018.

Your complaint has now been investigated and the findings are set out below. In this letter I will explain what the Investigating Officer has found out from the investigation, what our conclusions are and if appropriate, what actions are to be taken to address your concerns.

The complaint investigated is:

1. Your dissatisfaction with the level of flexibility applied on the planning permission of 10 Ashley Park North.

Background

A planning application for the erection of single storey extension to front side and rear of the house at 10 Ashley Park North was approved by the Council under delegated powers on 29 May 2017 and has been constructed. You have subsequently been in correspondence with the planning service primarily through your Ward Councillor Martin Greig as detailed below complaining about the impact of the development on your privacy and residential amenity and the degree of flexibility in the application of Council planning guidance in the determination of the application.

Investigation

An investigation has been carried out by a Council Planning Manager with 27 years of experience and forms the basis for the conclusions that we have reached.

GALE BEATTIE
INTERIM CHIEF OFFICER STRATEGIC PLACE PLANNING



The investigation involved interviews with the planning case officer, [REDACTED] and Planning Inspector, [REDACTED]. The investigation also involved scrutiny of the approved plans and the case officer's report of handling on the application and examination of all the photos and emails that you have submitted to the Council.

These include the following:

- an email from you to [REDACTED] via PI on 21 December 2017;
- an email from [REDACTED] to you on 22 December 2017;
- an email from you to [REDACTED] on 7 January 2018;
- an email from you to [REDACTED] on 25 January 2018;
- an email from [REDACTED] to you on 26 January 2018;
- emails from yourself and from Councillor Greig to [REDACTED] on 30 January 2018;
- an email from [REDACTED] Councillor Greig on 1 February 2018;
- an email from [REDACTED] to Councillor Greig on 7 February 2018;
- an email from Councillor Greig to [REDACTED] 27 February 2018;
- an email from Councillor Greig to [REDACTED] 28 February 2018;
- an email from [REDACTED] to Councillor Greig on 5 April 2018; and
- an email from Councillor Greig to Council Complaints Team and yourself on 3 May 2018.

Complaint 1: Your dissatisfaction with the level of flexibility applied on the planning permission of 10 Ashley Park North.

What did happen?

The planning application for the erection of single storey extension to front side and rear of the house at 10 Ashley Park North was approved by the Council under delegated powers on 29 May 2017 and was been constructed. You raised concerns with directly with us and also Councillor Greig regarding the undue and excessive level of flexibility that had been given in approving the application.

Council officers responded to yourself or Councillor Greig addressing the enquiries that you raised (or that were submitted on your behalf by Councillor Greig) related to the extension at 10 Ashley Park North between 21 December 2017 and 28 February 2018. [REDACTED] provided an extensive email dated 7 February explaining the decision-making process.

[REDACTED] responded briefly to Councillor Greig on 5 April however the response provided was not in depth and did not address the additional concerns about the level of flexibility applied on planning permission that you raised through Councillor Greig in his email of 27 February 2018, 28 February 2018 and 3 May 2018.

Councillor Greig contacted the customer Feedback Team on your behalf to lodge a complaint regarding this matter as the responses you were dissatisfied with the responses you had received.

What should have happened?

In his email of 5 April [REDACTED] should have been more specific in addressing your follow up concerns in the emails of 27 and 28 February. In order to rectify this, the following information is provided to address and answer the points that you raised at that time:

Scale of development

The issue of the increase in the footprint of the property as a result of the extension was examined in the written assessment in the report of handling which can be viewed at <https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OQK9GHBZL4400>

General principles contained in the Householder Development Guide, against which the application was assessed, recommend that the built footprint of a dwelling house, as extended, should not exceed twice that of the original dwelling. The original dwelling house had a footprint of 54sq.m, later extended to the side/rear by an 18sq.m single storey extension and which was removed to accommodate the new extension. The new extension added a further 44sq.m of internal useable space on the original footprint, which is less than the 100% increase permitted, however when the integral garage is included, the total increase in the footprint rises by a further 18sq.m to 62sq.m. which equates to a 114% increase on the original floor space. The enclosure of the covered entrance is excluded from this calculation as the floor space was already in existence. Therefore in terms of the increase in the internal floor space the extension falls below the maximum increase permitted. It could be said that it is unfair to include the garage in the increase in footprint as had the garage been detached, it would only have been included in the calculation relating to the level of development within the whole plot, not in terms of increase on the footprint of the original dwelling house. However, for the purposes of the assessment, the garage was included in the footprint of the proposed extension which was found to be in excess of the 100% increase normally permitted. The original submission proposed an extension of even greater footprint than approved, which was reduced on the advice of the Planning Service.

While it was accepted that the proposal did not fully satisfy the guidance in terms of increase in footprint, a degree of flexibility regarding scale can be applied if it can be demonstrated that the increase on footprint would not result in any additional impact on neighbouring amenity or to the character of the area. This is a matter of judgement for the decision maker. A breach of the guidance figures does not automatically mean that an application is not acceptable. The decision maker is still required to assess the application on its own merits. With the foregoing in mind, the extension was considered acceptable in terms of the guidance for the following reasons:

- at 46% site coverage of the rear garden, the level of development complied with the Supplementary Guidance (SG) requiring no more than 50% development within the rear garden and was acceptable within the context of surrounding levels of development where the majority of properties in Ashley Park North have extended since original;
- the total site coverage of 53%, although relatively high, still compared favourably with the density of development within similar properties in the immediate area;
- the 4m projection complied fully with the maximum permitted by the guidance;
- the facing properties to the rear fronting Brighton Place are located at least 30m distant from the extension thereby retaining a sense of openness;
- the design of the extension (single storey and a flat roof) was not considered to overwhelm the original form of the dwelling house, which would still be apparent; and

- the extension is not generally visible from a public viewpoint, only a small section faces a public road, thereby visual amenity has been retained and given the extension's location and distance from neighbouring properties, the scale of development is neither apparent nor impacts on the established pattern of development.

Impact on residential amenity

The impact to neighbouring residential amenity was fully explored in the written assessment and it was demonstrated that the extension would have no impact in terms of loss of daylight to internal windows, nor result in any increase in overshadowing or additional loss of privacy.

To summarise, while the proposal did not fully satisfy the guidance in terms of the scale of development relative to the existing dwelling house, it was considered that current residential character and visual amenity would not be unduly diminished by the proposal, in compliance with Policy H1 (Residential Areas) of the Aberdeen Local Development Plan, and this was considered to be sufficient justification to approve the application, contrary to the policy guidance.

In response to your comment that the garden overshadows neighbouring gardens, we can advise that calculations relating to the additional shadow cast by the extension were based on the Building Research Establishment Information Paper on 'Site Layout Planning for Daylight' and indicated that the extension would be to the north of the adjoining property (No 9 Ashley Park North). Therefore, due to its orientation, the extension would cast no shadow on that property, while any additional overshadowing to the property to the north (11 Ashley Park North) would be minor and only affect the garage and driveway. Any other additional overshadowing would be contained within the applicants own garden. No notified neighbours raised any concerns regarding impact on their current residential amenity.

You comment that the extension overwhelms the original form of the dwelling house and is visually intrusive. In this regard the extension is only single storey and has a flat roof, with a finished height of 3.9m and sits below eaves height and is typical of numerous extensions to identical dwelling houses in the surrounding area. It is to a secondary elevation, not seen by the general public; of lesser height than the existing dwelling house; the original two storey dwelling house is clearly visible behind the extension and its original design is not masked; and the rear part of the extension is not considered visually intrusive within the streetscape by virtue of either its scale and height as it cannot be seen from a public viewpoint. The extension can therefore be deemed to be subservient to the original dwelling house as it doesn't interfere with the original design which is still apparent. The fact that the extension can be seen from the rear of some neighbouring properties does not mean that that the extension is visually intrusive.

Trees

The removal of the tree in the garden of 40 Brighton Place was not relevant to the determination of the application as the tree had been removed before the application for planning permission was submitted. The application was therefore determined on the basis of the existing site conditions. The rear elevation of 40 Brighton Place is off set from the application property and at least 35m distant, well out-with the 18m window to window distance required to protect internal privacy and indeed no windows from the new extension directly face any of that property's windows, therefore there is no impact to internal privacy, regardless of the removal of the tree.

At the time of the site visit, it was considered that the existing boundary walls and foliage were sufficient to retain current privacy levels within the rear garden. Views of the rear garden were already available from the upper floor of the application property and neighbouring properties and the erection of the extension has not provided any further opportunities for overlooking of the rear garden. No objections were received from the owners of this property regarding loss of privacy.

Internal floor level

You consider that the internal floor height has increased the potential for overlooking of his property. This issue is not dealt with as part of the planning application only in as far as it has a resultant impact on neighbouring amenity such as privacy. Ground levels drop between the front and rear of the house requiring a degree of underbuilding to the rear of the dwelling house to provide an equal internal floor level between the extension and the open plan kitchen/snug, as required by the Building Regulations to ensure safe practice and also to provide accessibility for all. Therefore the applicant had no option other than to continue the existing internal floor level into the extension; otherwise it would have failed to meet current Building Standards. In terms of planning, the internal floor height does not cause any impact to neighbouring privacy.

Erection of 2 metre high fence

The planning authority does not have the power to require the owners to erect a fence on the wall as you request even if it was considered by the planning authority that such a fence was now essential to protect residential amenity.

Conclusion

In summary, we conclude that the application has been assessed correctly in terms of material planning considerations and the decision is reasonable based on that assessment. The scale and massing of the extension was fully assessed in the context of the site. Although of sizeable proportions in terms of scale, we do not consider it to be out of character with either the existing dwelling house or the surrounding area. We appreciate that your opinion as to what constitutes a development of acceptable character differs from the decision maker (Aberdeen City Council). However in planning terms, the development is considered by the decision maker not to have any adverse impact. It is recognised that the proposed extension would not fully accord with guidance criteria in the associated SG: Householder Development Guide, in terms of increase in the footprint of the dwelling house. However, other material considerations, including the resultant site coverage, which is acceptable in terms of the SG, and lack of impact on visual or residential amenity, allowed for a departure from this element of the policy. We consider that there are no material planning considerations that would warrant refusal of the application.

While it was accepted that the proposal did not fully satisfy the guidance in terms of increase in footprint, a degree of flexibility regarding scale can be applied if it can be demonstrated that the increase on footprint would not result in any additional impact on neighbouring amenity or to the character of the area. This is a matter of judgement for the decision maker. A breach of the guidance figures does not automatically mean that an application is not acceptable. The decision maker is still required to assess the application on its own merits.

With the above in mind, we are unable to uphold your complaint however we realise that the information should have been provided to you sooner. [REDACTED] should have addressed in detail the follow up concerns that you raised via Councillor

Greig in his email of 27 and 28 February 2018. More specifically, your concerns about the scale of development and the impact on your amenity, trees and consideration of internal floor level and the degree of flexibility applied to the guidance in relation to these aspects. Also your demand that the owners of the property are required to erect a 2 metre high wooden screening fence on the top of the rubble wall, at their sole cost.

We understand that the above information and the conclusions reached will probably not change your opinion in respect of the development however we hope that our response clearly outlines the procedures carried out and on which the development was assessed and the decision to approve was reached.

What happens next?

I trust our response has addressed all areas of your complaint. However, if you remain dissatisfied with the conclusion of our complaints procedure you now have the right to approach the Scottish Public Services Ombudsman (SPSO) to consider your complaint.

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes complaints about Scottish councils. If you remain dissatisfied with a council after its complaints process, you can ask the SPSO to look at your complaint.

The SPSO cannot normally look at complaints:

- where you have not gone all the way through the council's complaints handling procedure
- more than 12 months after you became aware of the matter you want to complain about, or
- that have been or are being considered in court

The SPSO's contact details are:

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|--------------------------|--|
| Freepost postal address: | Freepost SPSO (<i>this is all you need to write on the envelope and you do not need to use a stamp</i>) |
| Freephone: | 0800 377 7330 |
| Online contact: | www.spsso.org.uk/contact-us |
| Website: | www.spsso.org.uk |
| Mobile site: | http://m.spsso.org.uk |
| In person: | SPSO, 4 Melville Street, Edinburgh, EH3 7NS |

Yours sincerely,

Gale Beattie
Interim Chief Officer Strategic Place Planning