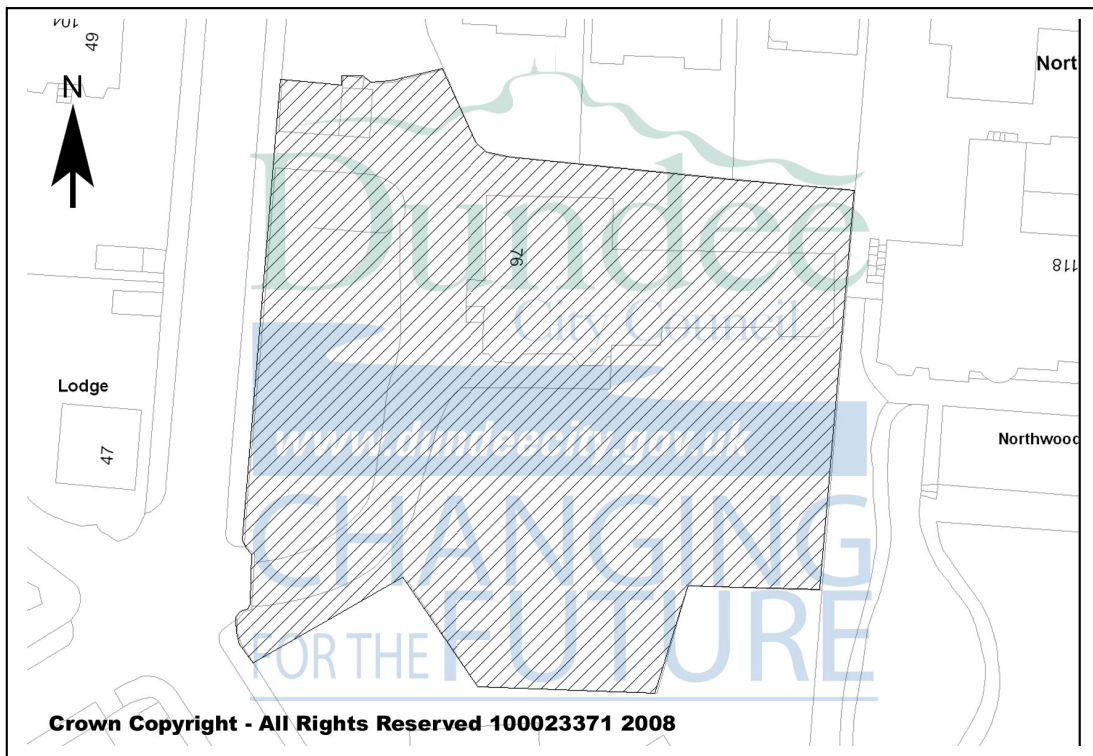


KEY INFORMATION**Ward** The Ferry**Proposal**

Demolition and rebuilding of boundary wall

AddressMoyness
76 Grove Road
Broughty Ferry
Dundee DD5 1JP**Applicant**Moyness Nursing Home Ltd
Moyness
76 Grove Road
Broughty Ferry
Dundee DD5 1JP**Agent**James Paul Associates
4 Brook Street
Broughty Ferry
Dundee DD5 1DP**Registered** 22 Aug 2008**Case Officer** C Walker

Rebuilding of Garden Wall Proposed in Grove Road

The demolition and rebuilding of boundary wall are **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation.

RECOMMENDATION

The proposed development, because it involves the felling of a number of mature trees, contravenes the Local Plan and has a detrimental impact on the conservation area. The application is recommended for **REFUSAL**.

SUMMARY OF REPORT

- Planning permission is sought to rebuild the roadside boundary wall enclosing the grounds of Moyness Nursing Home at Grove Road. It is proposed to fell 11 trees to construct the wall. The applicants state that the wall is dangerous and needs to be replaced.
- The site is in the West Ferry Conservation Area and the trees are protected by a Tree Preservation Order. Policies 15, 61 and 72 of the Local Plan are relevant.
- A letter of objection was received from the Community Council who are concerned about the loss of the trees.
- It is considered that whilst the wall needs to be replaced, this should not involve the felling of the trees. The development contravenes the Local Plan and would detract from the appearance of the conservation area.

DESCRIPTION OF PROPOSAL

Planning permission is sought to rebuild the roadside boundary wall enclosing the grounds of Moyness Nursing Home at Grove Road. A total of some 50 linear metres of wall is involved. There is a separate application for Conservation Area Consent to demolish the wall, the report on which appears elsewhere in this Agenda (application 08/00599/CON refers).

The proposed new wall would be constructed of concrete blocks finished in a smooth sand/cement render and a concrete cope. It would extend to a similar height (approximately 2 metres) as the existing wall. To construct the new wall it is proposed to fell 11 trees along the roadside boundary.

In their supporting statement the applicants say that the tree root system is exerting lateral pressure on the wall and that this will continue as the trees grow leading to eventual collapse.

An Engineer's Report has been submitted with the application. Following an inspection in January 2008 the Report concludes that the present condition of the wall represents a danger to users of Grove Road and should be removed as soon as possible, that the trees are the likely cause of the movement seen in the wall and that a replacement wall will require more space than the trees allow so they will have to be removed.

Following further correspondence with the Council the applicants' Engineer responded as follows:

A temporary repair would only be possible if masonry supporting piers were constructed on the Grove Road footpath;

Even with an additional 600mm of footway, a new wall could not be constructed within the space without removing the trees;

Sheet piling to build a new wall whilst protecting the trees would not be an option because the trees would need to be severely pruned to hammer the sheets into place;

In September 2008 the Engineer produced a further report on the condition of the wall indicating that it

is out of plumb and overhanging the footpath.



A Tree report has been submitted with the application. This indicates that the proposed excavation indicated on the drawings to construct the new wall would cause severe damage to the root

a converted villa which has been significantly extended on its eastern site by a two storey brick extension. Moyness is an attractive villa dating from 1876 with coloured rendered walls and a slate roof. Its principal rooms face south and on the west elevation there is a balustraded entrance porch.

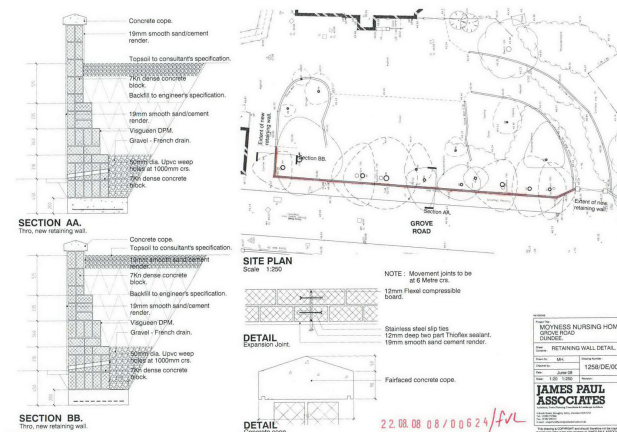
The site is enclosed by a cement faced wall immediately behind which is a row of large mature trees (mainly lime). All these trees (and others within the grounds of Moyness) are protected by a Tree Preservation Order and make a very significant contribution to the visual amenity of the West Ferry Conservation Area. There are two vehicular accesses off Grove Road forming an in-out one way system. The wall is 2 metres high when viewed from the roadside but retains ground within the site approximately 1 metre above pavement level but the ground rises to higher levels at the north west corner. The footway on Grove Road is approximately 2.4 metres wide and there are two lamp standards along the pavement at the site frontage. The closure of the footpath between the two access points and the erection of barriers has been carried out by the applicants.



systems of 11 trees to such an extent that they would become dangerously unstable and even severe pruning, which would destroy their visual amenity, would not guarantee survival. A replacement planting scheme of 11 trees and 25 shrubs is proposed.

This section of Grove Road between Strathern Road and Albany Road is some 7.5 metres wide with footways on either side. The low density residential development typical of this area means that it is little used for parking.

The site lies within the West Ferry Conservation Area and is surrounded by houses. The area is generally characterised by large stone villas set in landscaped grounds enclosed by stone boundary walls. To the north west is a former lodge house now with its own curtilage and to the north are three large modern houses built within the former grounds of Moyness. To the south are two large modern houses also built within the former garden ground. To the east is Northwood, a substantial Category B listed villa, now used as offices for Servite Housing Association. New houses and flats



SITE DESCRIPTION

The site comprises Moyness Nursing Home, a 30 bedroom nursing home in

have been constructed within the grounds of Northwood. To the west, on the opposite side of Grove Road, is a substantial villa at the junction with Strathern Road and the Category B listed Claremont Lodge.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan Review 2005

Policy 15 on garden ground development is applicable.

The site is within the West Ferry Conservation Area and Policy 61 requires all development proposals to preserve or enhance the character of the surrounding area.

Policy 72 requires new development to have regard to existing healthy mature trees.

Scottish Planning Policies, Planning Advice Notes and Circulars

The Memorandum of Guidance on Listed Buildings and Conservation Areas sets out Government advice on, amongst other matters, demolition and new development in conservation areas.

Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Breaches in Boundary Walls Policy and Guidance for Dundee's Listed Buildings and Conservation Areas.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

In 1988 planning permission was granted for a 19 bedroom two storey extension on the east side of "Moyness" in 1988 and that extension has been constructed - application D12967 refers.

A total of five new houses have been built to the north and south of "Moyness" in what was once part of its garden ground, the consents for which date back to the mid to late 1980's.

In December 2007 the Council refused planning permission for a two storey extension on the west elevation of the building - application 07/00915/FUL refers. With those proposals the applicants indicated that they wished to fell a number of trees including seven mature trees which they stated were damaging the roadside boundary wall at Grove Road. One of the reasons for refusal related to the proposed felling of the mature trees on the site.

The applicants appealed this decision and the appeal was dismissed in May 2008. The Reporter identified the roadside trees as the property's main contribution to the conservation area and concluded that there was no reason why the trees could not be retained perhaps with a lowered wall with railings.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the proposed development was advertised as affecting the setting of the West Ferry Conservation Area. No public comment was received.

CONSULTATIONS

A letter of objection was received from the Community Council who are concerned about the loss of important mature trees along the boundary wall. They are unconvinced about the danger to public safety posed by the wall and are concerned that the public safety issue is a pretext to enable the trees to be removed so that a subsequent application for an extension to the nursing home would stand a greater chance of success.

The Council's Forestry Officer is concerned about the proposed felling of the mature trees on Grove Road which are protected by a Tree Preservation Order. He states that the loss of 11 mature trees on the site will be both visually and climatically difficult to replace and it would take many years for any replacement planting to recover to the same degree as the existing trees, most of which will have a lifespan of in excess of 30 years. He states that any solution to

deal with problems with the roadside boundary wall should include the retention of the trees.

OBSERVATIONS

Statutory Requirements

In accordance with Section 25 of the Town and Country Planning (Scotland) Act 1997 the Committee is required to consider:

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations.

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Policy 15(g) relates to boundary walls and 15(h) and (i) to tree protection in the context of Development in Garden Ground. Policy 61 requires all development proposals to preserve or enhance the character of the surrounding conservation area. Finally Policy 72 requires new development to have regard to existing healthy mature trees.

Essentially the issues that need to be addressed are whether the proposed replacement wall is of satisfactory design in terms of its visual impact on the conservation area and whether the linked proposal to fell the mature trees protected by a Tree Preservation Order complies with Local Plan policy and preserves the character and appearance of the West Ferry Conservation Area.

The preamble to Policy 15 states that its aim is to protect the architectural appearance and landscape features of low density parts of the city. Sub-section (g) states that proposals should conform to the Council's non statutory guidance on Breaches in Boundary Walls.

This guidance does not directly address the current proposals where the demolition and replacement of the existing wall is proposed not to accommodate new development or provide an access but rather to address a public safety issue. Furthermore unlike most other walls in the conservation area, this is not a traditional masonry wall but rather a rubble wall faced in cement mortar.

It is considered that to all intents and purposes the proposed new wall will have an almost identical appearance to the existing wall with no resulting loss of enclosure. Although the non statutory guidance recommends that walls requiring significant rebuilding should be rebuilt using the original material as far as possible it is considered in this case that as the wall will be cement faced there would be no impact on visual amenity by permitting block construction. It is concluded that the design of the new wall does not depart from the principles set out in the non statutory policies.

However, the proposal to rebuild the wall cannot be separated from the linked proposal to fell 11 trees along the roadside boundary as the particular design proposed cannot be implemented without this happening. These trees make a very strong contribution to the visual amenity of the West Ferry Conservation Area and their loss would have a very detrimental impact on both the character and appearance of the conservation area. The proposed replacement planting would take many years to mature and indeed may struggle to survive any future development proposals within the grounds of Moyness.

It is concluded that the felling of the mature roadside trees and the consequent detrimental impact on the West Ferry Conservation Area contravenes Policy 15 (h), 61 and 72 of the adopted Local Plan.

The Statutory duty set out in Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

This requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. As explained above in the context of the assessment of the proposal under Policy 61 of the adopted Local Plan, the proposed felling of mature trees

would not preserve the character or appearance of the West Ferry Conservation Area.

Other Material Considerations

The other material considerations to be taken into account are as follows:

- a The Various Reports Justifying the Replacement of the Wall and the Felling of Trees.

The Council has independently assessed the condition of the wall taking into account the Engineer's reports submitted by the applicants and has concluded that the wall is approaching the limit of stability, that a timescale for when this will be reached is indeterminate and that it needs to be replaced. There are also other sections of wall at Moyness which are leaning to a greater extent but which are not fenced off from the public.

However, it has consistently been pointed out to the applicants that the retention of the mature trees protected by the Tree Preservation Order is essential and that any proposals for the temporary stabilising and the permanent replacement of the walls needs to take this into account. Whilst this is a matter for the applicants to address they have been informed that the Council will be as flexible as possible in considering appropriate solutions. Suggestions about lowering the wall have been made by both the Council and the Reporter who considered the previous appeal and it has been suggested to the applicants that a solution that would require encroachment onto a portion of the footway might be considered.

There is no evidence that the applicants have independently investigated a solution involving the replacement of the wall with the retention of the trees. This may be because of the cost of such alternatives or that the retention of the mature trees would stymie development proposals previously submitted within the grounds of Moyness. The only alternatives they have considered have been in response to suggestions from the Council but there may be many other

solutions which have not yet been put forward.

Therefore whilst it is accepted that a case for the replacement of the wall has been made, an acceptable solution involving the retention of the trees has not been put forward.

- b The Council's Non Statutory Policy on Breaches in Boundary Walls and Government advice in The Memorandum of Guidance on Listed Buildings and Conservation Areas.

The Council's Non Statutory Policy has been considered in the context of the assessment of the proposal against the Local Plan and it was concluded that the design of the new wall does not depart from the principles set out in this document.

The Memorandum of Guidance on Listed Buildings and Conservation Areas sets out the procedures involved in assessing demolition and new development conservation areas. The Guidance is similar to that in the Councils Non Statutory Policy.

- c The Concerns of the Community Council.

The Community Council are concerned about the loss of important mature trees along the boundary wall. They are unconvinced about the danger to public safety posed by the wall and are concerned that the public safety issue is a pretext to enable the trees to be removed so that a subsequent application for an extension to the nursing home would stand a greater chance of success. The views of the Community Council on the loss of the trees is endorsed and it has been concluded elsewhere in this Report that this loss has not been justified. Whilst the concerns about the public safety issue being a pretext to remove the trees are understandable given that the issue only came to light when the applicants decided to apply to extend their premises and given that the applicants concerns initially only related to that part of the wall affected by development proposals (and indeed this is the only section of wall fenced off despite other

areas being in poorer condition), it has been concluded that there is a genuine case for replacing the wall but that this should only be carried out in circumstances where the mature trees are protected.

It is concluded from the foregoing that there are no material considerations that would justify setting aside the terms of the Development Plan and the requirement to preserve and enhance the character and appearance of the conservation area. It is therefore recommended that planning permission be refused.

Design

It is considered that to all intents and purposes the proposed new wall will have an almost identical appearance to the existing wall with no resulting loss of enclosure. However, the loss of the mature trees on Grove Road will have a significant adverse impact on the visual amenity of the area.

CONCLUSION

The proposed development, because it involves the felling of a number of mature trees which make a very significant contribution to the character and appearance of the West Ferry Conservation Area, contravenes Policies 15, 61 and 72 of the adopted Local Plan. For the same reasons the proposed development would detract from the character and appearance of the West Ferry Conservation Area. The application is recommended for REFUSAL.

RECOMMENDATION

It is recommended that consent be REFUSED for the following reasons:-

- 1 The proposed development contravenes Policy 15 (h), 61 and 72 of the adopted Dundee Local Plan Review 2005 because of the extensive felling of mature trees which make a significant visual contribution to the character and appearance of the West Ferry Conservation Area. There are no material considerations that would justify the approval of this application contrary to the provisions of the Development Plan.
- 2 The proposed development would have a detrimental impact

on the character and appearance of the West Ferry Conservation Area by reason of the extensive felling of mature trees which make a significant visual contribution to the conservation area. The approval of this development would fail to meet the Statutory duty set out in Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.