

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 16 AUGUST 2022

PLANNING APPLICATION – BENNACHIE, SHIELHILL ROAD, KIRRIEMUIR, DD8 4PA  
GRID REF: 338703 : 755099

REPORT BY SERVICE LEAD – PLANNING & SUSTAINABLE GROWTH

**Abstract:**

This report deals with planning application No. [22/00267/FULL](#) for the erection of a new dwelling in the garden ground of Bennachie Shielhill Road, Kirriemuir and the formation of a new vehicle access taken from Shielhill Road, by Mr and Mrs Gunn. This application is recommended for conditional approval.

**1. RECOMMENDATION**

It is recommended that the application be approved for the reason and subject to the conditions given in Section 10 of this report.

**2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN**

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

**3. INTRODUCTION**

- 3.1 Full planning permission is sought for the erection of a house and associated works, including the formation of a new vehicular access for an existing dwelling on land at Bennachie, Shielhill Road, Kirriemuir. A plan showing the location of the site is provided at Appendix 1.
- 3.2 The application site extends to approximately 1,680sqm. It comprises garden ground associated with an existing dwelling known as Bennachie and an area of land associated with the Northmuir Hall car park. The area is predominantly residential in nature with a variety of house designs.
- 3.3 The proposal seeks permission for the erection of a 1½ storey, pitched roof, 3-bedroom dwelling. The new house would be finished in white render with a slate grey roof. An existing domestic garage would be included within the plot and the existing access that serves the garage would continue to be used. A new vehicular access would be formed from Shielhill Road to serve Bennachie and a car parking area would be formed to serve that property. The new house would be located on a plot measuring approximately 675sqm and Bennachie would retain a curtilage in the region of 745sqm. The new dwelling would be served by the public water supply and drainage networks and SUDs provision would be made to manage surface water from the site.
- 3.4 The drawing named and numbered Location and Existing/Proposed Site Plans no.

2475 - 100 PL Rev C, amends and supersedes the earlier drawing of the same name and number. The amended drawings show the proposed house located further from the southern boundary of the site, include the existing hedge along the southern boundary, identify trees within the site, and provide detail of visibility splays. The amended drawings also include a relocated and larger opening and parking area for Bennachie.

- 3.5 The application has been subject of statutory neighbour notification and the application was advertised in the press as required by legislation.

#### **4. RELEVANT PLANNING HISTORY**

There is no planning history which is relevant to the current application.

#### **5. APPLICANT'S CASE**

The applicant's agent, in response to concerns raised by objectors, provided a copy of the title deeds for Bennachie. The agent suggests this indicates the property has a right of access through the Northmuir Hall car park to the east. It is also suggested the existing hedge bounding the south of the site appears to be wholly within the application site and would be retained. With regards to use of the existing access, it is indicated that this would continue to serve only one property as a new access is proposed for Bennachie direct from Shielhill Road. Accordingly, the proposal would not result in any greater impact than at present.

#### **6. CONSULTATIONS**

- 6.1 **Angus Council – Roads** – has offered no objection to the proposal subject to conditions to regulate the provision of car parking and visibility splays.
- 6.2 **Scottish Water** – has offered no objection and has advised there is currently sufficient capacity at the local water and wastewater (foul) treatment works to serve the development.
- 6.3 **Kirriemuir Community Council** – there was no response from this consultee at the time of report preparation.

#### **7. REPRESENTATIONS**

- 7.1 7 letters of representation have been received. The letters are provided at Appendix 2 and can be viewed on the council's [Public Access](#) website.
- 7.2 The following concerns have been raised in objection to the proposal and are discussed under Planning Considerations below: -
- Adverse impact upon residential amenity, including noise and disturbance from construction works
  - Unfavourable form of backland development, overdevelopment, and proximity to neighbouring boundaries
  - Loss of boundary hedge and trees and resultant impacts upon biodiversity
  - Adverse impacts to pedestrian and traffic safety, including parking at Northmuir Hall
  - Adverse impacts upon neighbouring playschool

The following matters are also raised and are dealt with below: -

- **Impacts upon the security of neighbouring property** – there is no evidence to suggest that the formation of an additional dwelling in an existing residential area would impact upon the security of existing properties.

- **Damage during construction works; lawfulness of access rights for new house; width of right of access** – issues associated with damage to third party property during construction works, and issues associated with the right of access are civil matters and are not material to the consideration of this application. However, it is not unusual for new houses to be built within existing urban areas without damage to third party property.
- **Planning condition on nearby plot to limit the number of dwellings due to road impacts** – conditions attached to a permission on another area of land are not material to the determination of this application. However, the new house would utilise an existing access, and the existing dwelling would be served by a new access taken direct from Shielhill Road. Accordingly, there would be no net increase in the number of houses taking access from the unadopted road to the east of the application site.

## 8. PLANNING CONSIDERATIONS

- 8.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 In this case the development plan comprises: -
- [TAYplan](#) (Approved 2017)
  - [Angus Local Development Plan](#) (ALDP) (Adopted 2016)
- 8.3 The application is not of strategic significance and the policies of TAYplan are not referred to in this report. The policies of the ALDP form the main basis for the consideration of the proposal and the relevant policies are reproduced at Appendix 3.
- 8.4 The application site is located within the development boundary for Kirriemuir as defined by the ALDP. Policy DS1 in the ALDP states that for unidentified sites within development boundaries, proposals will be supported where they are of a scale and nature appropriate to the location and where they accord with other relevant policies in the ALDP.
- 8.5 Policy TC2 deals with residential development and supports proposals within development boundaries where the site is not protected for another use, and where the proposal is consistent with the character and pattern of development in the surrounding area. Policy TC2 also requires new residential development to be compatible in terms of land use; provide a satisfactory residential environment; not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and include provision for affordable housing in accordance with Policy TC3 Affordable Housing.
- 8.6 The application site is not identified or safeguarded for any particular use. The surrounding area is predominantly residential in character. Northmuir Hall is located to the east, but the new house would be no closer to the hall than an existing dwelling, and the proposal would not alter the existing access through the halls car park or materially change its use. A house on the site would be compatible with existing and proposed uses.
- 8.7 The pattern of development in the surrounding area is mixed and there are several examples of small infill housing developments that are not unlike that proposed by this application. The proposal has some characteristics of a 'backland' plot, but it also has a frontage that would face the unadopted road to the east. The council's Advice Note 6 does not preclude 'backland' development, and the nature of development proposed would not appear uncharacteristic in this area.
- 8.8 The new house would have a plot size larger than the 400sqm minimum requirement

identified in council design guidance, and the existing dwelling would retain a plot greater than the minimum requirement. Both plots would be comparable with plot sizes in the surrounding area, and each would have in excess of 100sqm of private garden ground with adequate space for vehicle parking and turning, as well as bin and recycling storage. The proposed house would not be significantly affected by neighbouring property and a reasonable residential environment would be provided. The separation distance between the new house and existing dwellings would comply with the guideline spatial standards identified in the council's Advice Notes 6 and 14 and would be comparable with those found in the surrounding area. The proposal has been amended to increase separation distance between the proposed house and the gardens of the houses to the south. The proposed first floor windows are all rooflights and would face east and west, towards the hall car park and the retained plot of Bennachie. A condition is proposed to remove those permitted development rights that would allow formation of additional windows at or above first floor level. This would allow impacts associated with the formation of any new upper floor windows to be assessed through the submission of an application. In addition, conditions are proposed regarding finished levels and boundary enclosures in order that suitable detail can be agreed in the interests of amenity. The new access and parking area that are proposed to serve Bennachie do not give rise to any unusual or significant amenity impacts. Overall, the proposal could provide a good residential environment without resulting in any unacceptable adverse impact on the amenity of occupants of neighbouring property.

- 8.9 The site is not subject of any built or cultural heritage designation, and the proposal would not result in any significant direct or indirect impacts on such interests. There are a variety of house types in the area including traditional style stone and slate properties and more recent buildings of modern design and appearance. The proposed dwelling has similar design characteristics to more modern house types in the area and would not be inappropriate in that context. The layout and form of the proposed house would be appropriate for the site having regard to the nature of the surrounding area and the council's supplementary guidance on design quality and placemaking.
- 8.10 The site is not subject of any natural heritage designation and there is no evidence to suggest that its development would adversely affect any protected species. Aerial photography appears to indicate significant tree cover and some of that may have been removed. Some young trees and shrubs that contribute little to the townscape of the wider area would be removed to facilitate the new house. In addition, some would be removed to allow formation of the new access that would serve Bennachie, but the resultant situation would not be untypical of that found on Shielhill Road. A condition is proposed that requires details of soft landscaping proposals, including proposals for compensatory planting. Submitted information indicates that an existing hedge to the south of the site would be retained and the conditions also seeks measures to protect the hedge during construction. The proposal would not result in any significant impact on natural heritage interests.
- 8.11 The new house would utilise an existing vehicular access that serves a garage located within the site. A new access taken from Shielhill Road would be formed for the existing dwelling. Both the existing and new house would have parking in accordance with relevant council standards. The roads service has considered the proposal and has no objection subject to the provision and maintenance of suitable visibility splays and drainage associated with the new access. A condition is proposed to deal with this matter.
- 8.12 The proposed drainage arrangements are compatible with policy and Scottish Water has indicated no objection. The precise detail of surface water drainage arrangements would be regulated as part of the building warrant process. There is no reason to consider that the proposal would result in any significant impacts on infrastructure and the development is not of a scale that would require affordable

housing or developer contribution towards other community infrastructure.

- 8.13 The proposal does not give rise to any other significant issues in terms of development plan policy and is of a scale and nature appropriate for the location. The application complies with the development plan.
- 8.14 In terms of material considerations it is necessary to have regard to the relevant planning matters raised in the letters of representation in so far as they are not addressed above. It is also relevant to have regard to Scottish Planning Policy (SPP) and the policies it contains.
- 8.15 In relation to matters raised in representation, the concerns raised by neighbours in relation to potential amenity impacts are understandable. Any new development in an existing area will result in change and is likely to have some impact on existing residents. However, as discussed above, this proposal complies with relevant spatial standards and would reflect the existing development pattern in the area. Occupants of a new house may generate additional noise, but that is true of any new house in any established residential area. There is no evidence or reason to conclude that any such impact would be usual, significant, or unacceptable at this location. In terms of noise, it is not anticipated that the formation of an additional dwelling in an existing residential area would exacerbate existing noise levels. Construction works may cause some localised disruption in terms of noise and additional traffic movements, but it is not unusual for this type and scale of development to take place in an existing urban without significant adverse impact.
- 8.16 The proposed dwelling would occupy less than 30% of the proposed plot and is consistent with guidance on this matter and with the pattern of development in the area. Although backland sites are generally undesirable, the primary interest is protecting the amenity of adjoining neighbours, and for the reasons discussed above the proposal would not result in any unacceptable amenity impacts.
- 8.17 The roads service has offered no objection and is satisfied that the development could be accommodated without unacceptable impacts on road traffic or pedestrian safety. An existing access that currently serves a single house would continue to be used by a single house. There is no reasonable basis to consider that would have any different impact on Northmuir Hall or the associated playschool. The new house would be no closer to the hall than an existing dwelling.
- 8.18 The matters raised in objection have been considered and where appropriate the proposal has been amended or conditions are proposed to address matters raised. However, the objections do not alter the conclusion that the proposal complies with development plan policy, and they do not raise material planning matters that justify refusal of planning permission.
- 8.19 Paragraph 33 of 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. In this case TAYplan is less than 5-years old but the ALDP has recently become more than 5- years old as it was adopted in September 2016. The policies contained in the ALDP are generally consistent with TAYplan and SPP. The provision of a new house within an existing development in a manner that does not give rise to any significant impact on the environment, amenity, or infrastructure is development that contributes to sustainable development. There is nothing in the SPP that would suggest the application should be refused contrary to the provisions of the development plan framework.
- 8.20 In conclusion, the proposal provides for the erection of a new house on land within an existing development boundary, and for the formation of a new vehicular access to serve an existing dwelling. Consultation responses have not identified any unacceptable impacts and the proposed development does not give rise to

unacceptable impacts on amenity, the natural and built environment, road safety or infrastructure subject to the proposed planning conditions. The matters raised in objection have been considered in the preparation of this report and, where appropriate, are addressed by conditions. The proposal is compatible with the relevant provisions of the development plan and there are no material considerations that justify refusal of planning permission.

## **9. OTHER MATTERS**

### **HUMAN RIGHTS IMPLICATIONS**

The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

## **10. CONCLUSION**

It is recommended that the application be approved for the following reason, and subject to the following condition(s):

### **Reason(s) for Approval:**

The proposal is in accordance with the development plan as it is compatible with the locational criteria identified in the plan and as it does not give rise to unacceptable impacts on amenity, natural and built environment interests, road safety, or infrastructure, subject to conditions. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

### **Conditions:**

- 1, Prior to the commencement of development, the following detail shall be submitted to and approved in writing by the planning authority: -
  - a) a scheme of hard and soft landscaping, including details of all proposed boundary enclosures. The scheme shall include measures for the protection and retention of the hedge on the south boundary of the site during construction and shall make provision for compensatory planting in relation to trees and shrubs that are to be removed to facilitate the construction of the new house and the formation of the new vehicular access. Thereafter the development shall be undertaken in accordance with the approved details with the hedge protection measures deployed prior to and throughout construction, and the approved boundary enclosures and compensatory planting provided prior to occupation of the new house. Any planting which, within a period of 5 years from the completion of the development, is considered by the planning authority to be dying, severely damaged, or becoming seriously diseased must be replaced by plants of similar size and species to those originally planted in the first available planting season.
  - b) detailed plans showing existing and proposed ground levels and proposed finished floor levels relative to a fixed datum and neighbouring buildings. Thereafter the development shall be undertaken in accordance with the approved details.

*Reason: In order to ensure appropriate hard and soft landscaping, boundary enclosures, and compensatory planting in the interests of amenity and biodiversity, and to ensure appropriate finished ground and floor levels in the interests of amenity.*

2. That prior to the commencement of construction of the new house hereby approved, the new vehicle access taken from Shielhill Road to serve Bennachie shall be completed and the car parking spaces provided as detailed on drawing number PMS 2475 - 100 PL Rev C. The new access shall be designed to prevent the discharge of surface water onto the public road. This shall include the provision of a cut-off drain at the end of the driveway if its finished ground levels fall towards Shielhill Road. Visibility splays shall be provided at the junction as detailed on the aforementioned drawing and shall provide a minimum sight distance of 43 metres in each direction at a point 2.0 metres from the nearside channel line of Shielhill Road. Within the above visibility splays nothing shall be erected, or planting permitted to grow to a height in excess of 1050 millimetres above the adjacent road channel level.

*Reason: In order to ensure that the new access is provided in a timely and safe manner, and to minimise increased vehicular movement on the existing access in the interests of amenity and safety.*

3. That notwithstanding the provisions of any development order, no windows, doors, or openings, other than as shown on the drawings hereby approved, shall be formed at or above first floor level unless otherwise approved through the grant of planning permission following the submission of an application to the planning authority.

*Reason: In order that the planning authority may consider the acceptability of any additional windows or other openings on the amenity of occupants of nearby property having regard to relevant policy and guidance*

**Informative:** The applicant is advised that the verge crossings at the proposed access must be formed and constructed in accordance with the standards of Angus Council. An application form can be downloaded from the Council website for that purpose and the completed form shall be submitted to the Roads Service for their consideration.

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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**DATE: 8 AUGUST 2022**

APPENDIX 1: LOCATION PLAN  
APPENDIX 2: LETTERS OF REPRESENTATION  
APPENDIX 3: DEVELOPMENT PLAN POLICIES  
APPENDIX 4: PLANNING SERVICE PRESENTATION