

Minute of item 13A on the agenda of Woodlands and Park Community Council meeting held on Wednesday 8 June 2022, via Zoom, at 7.30pm

13A Request by Ailie Macpherson and others, including their surveyor, that Woodlands and Park Community Council withdraw its objections to planning application 22/00518/FUL [External alterations to flatted dwellings, comprising structural, stone work and roof repairs and tree works, 343 West Princes Street]

Gerry sought to confirm whether the representation from 343 West Princes Street were asking for 15 minutes to present their case. Ailie Macpherson said that Steven Dowling had suggested 15 minutes for owners of flats at 343 West Princes Street to present their case and that she had been nominated by the other owners to speak on their behalf. She said that they also had a surveyor present, Sean Griffin of Ramsay McMichael, who had put in the application on their behalf and would pick up on technical issues.

Ailie introduced those at the meeting as herself and her husband, Ian Graham, co-owners of flat 2/1; Fiona Morton, owner of 3/1; Alfie Vaughan, owner of 3/2; and David Dickie, owner of 0/1. She was also authorised to speak on behalf of Alasdair Smith, owner of 1/1, and Chihoi Lee, who represents his father, K. P. Lee, owner of 2/2. All six were co-signatories to the letter asking for a meeting with the community council. She thanked Tom for his email, sent via Alfie Vaughan, which had reassured them that the community council is not seeking to object to the necessary repair works.

She said that disregarding environmental issues and planning policies was not their intention. If such has happened, then it must have happened through their professional representatives or through the paperwork. As responsible owners, they are keen to maintain their properties in line with a commitment to conservation. They would have waited for the Planning Committee because of the objections, but the delay would mean costs going up even more. The delay from November to March had cost £2,000 per flat, and a further delay will mean the same amount again and more with inflation, money better in the Council's grant repair fund than spent on increased construction costs. They want to preserve trees. All they need is to make sure that scaffolding can be put up so that contractors can do their work safely. The Council had already sent out a landscape architect and tree surgeon who had said that what the owners were proposing was reasonable. When the scaffolding is put up a tree preservation officer will be present.

There had been confusion about the cutting down of a tree in the front garden. Their tree survey does not recommend that. There had been a meeting on 17 May when the neighbour in flat 1/2 (Ailie made clear that she did not speak for flat 1/2 or flat 0/1) had said that she had objected because she did not want the larch to come down. When told there was no intention of cutting it down, the neighbour indicated that she would withdraw her objection. She had been concerned because the owner of flat 0/1 had had a letter recommending that the tree come down. Evidently, a loss adjuster who had come to inspect the top-floor flats for water damage had sent a letter to the factor to be forwarded to the owner of that property to say that he believed the tree was a risk and should come down.

Ailie said that another outstanding matter is nesting pigeons. The applications refer to the Wildlife Act. The work will not interfere with nesting pigeons because it will not start before September. They had taken advice from Nature Scotland who say that while wood pigeons are covered under the Act, an owner under a General Licence can remove nests because pigeons are not a protected species and are very robust. She showed photographs to demonstrate some of the problems they are having because of repeated water ingress. On technical matters, they have been reliant on Charing Cross Housing Association as factors and Ramsay McMichael, both of whom are being paid a fee.

Gerry repeated that the community council has never objected to the remedial work but has objected to the proper procedures not being followed regarding the trees and the amount of work to be done to them.

Sean Griffin, speaking on the owners' behalf, said he thought one of the objections was mainly on the inconsistencies of the documents referring to the tree survey and whatever planning application is going to be contributing towards the scheme of works. The tree survey does refer to trees being felled but is purely a recommendation for the owners because they were the ones that Ramsay McMichael had to get this for Planning. For the scheme of works, all that is proposed is minimal trimming of the larch tree to allow erection of scaffolding around the bay window. Other objections relate to the protected species survey. Ramsay McMichael had spoken to the planners and were assured that there will be conditions put on the planning consent. The Wildlife and Country Act of 1981 covers these points. If nesting pigeons or a protected species were harmed it would become a Police matter, which means the proper procedures need to be followed. There will be a tree preservation officer on site and others to make sure that the work is done through the proper channels.

Gerry then opened the discussion to the rest of the community council.

Tom said that he did not hold Sean responsible for the withdrawn planning application because it was a different employee of Ramsay McMichael who had dealt with that application, which had ignored the existence of the trees altogether.

In discussion between Tom and Sean, Sean said that there had been no pre-application discussion with planners but that once a planning officer was in place there had been dialogue with that officer.

The next item of discussion was on the City Development Plan. Sean said that the plan requires a protected species survey but what takes precedence is the Wildlife and Countryside Act 1981, which provides protection to habitats and animals within an area. A condition of consent is that a tree surgeon would need to carry out a survey and if nesting birds or bat roosts were identified prior to any works a plan would be drawn up.

Tom summarised the history of the planning applications for the site. An application had first been made in July 2021. If it had been in accordance with environmental policies, whether based on the City Development Plan or the Wildlife and Countryside Act, it is unlikely that there would have been any objections and permission would almost certainly have been granted under delegated authority. Instead, after the false claim of no trees followed by plans to fell the larch, that application was withdrawn in January 2022, and a new application introduced fresh breaches of planning policy, specifically the lack of a tree survey and the need to carry out a protected species survey, which the City Development Plan requires whenever work affecting trees is proposed. The same requirement is reiterated in the introduction to the tree survey commissioned by Ramsay McMichael. There remain conflicting descriptions of the scope of the tree works when the application drawings are read with the tree survey. These discrepancies need to be resolved and confirmed in writing. It appears that the agent and its then employee are responsible for the plight of the owners and are thus possibly open to legal action.

In discussion between Tom and Ailie about the community council withdrawing its objection so that, with the evidently intended withdrawal of her objection by the owner of flat 1/2, the number of objections would fall below six and the application could progress on the basis of delegated authority, Tom said the number of objections can only be determined by what is showing on the planning portal and the day before that was still seven.

He then explained the difference between decisions made under delegated authority and those made by the full Planning Committee. There is a common misunderstanding that this is always triggered by six objections or more. This would only be true if there were six or more objections and the planning officer wanted to grant, when it would have to go to committee. Likewise, if there were six supporting letters and the officer wanted to refuse, it would have to go to committee. If they were of the same mind, it could be dealt with under delegated authority in either case. Tom gave the example of a development planned for 65–77 Otago Street where there were over 82,000 objections. The officer also wanted to refuse and did so under delegated authority, and it is now being appealed to the Local Review Committee.

Ailie said that she was under the impression that the planning officer believed that their application was sound but the objections meant it had to go to the committee, but she may have picked that up wrongly from Ramsay McMichael as she has not had any conversation with the planning officer. For clarification, Gerry asked Ailie if she had not stated in an email to Tom that she had taken advice from the surveyor and from the planning case officer. Ailie replied that she had not spoken with the planning case officer about what he thought about it but she had asked him a factual question about whether a protected species survey was needed and had then referred that to Sean. She would see if she could dig out the response. Sean said the tree survey had been requested by the Planning department.

Tom asked Sean how did he not know that he had to submit a tree survey if he had read the supplementary guidance for the relevant part of the City Development Plan as it is the agent's responsibility to be familiar with local authority planning policy. Sean said that this had been prior to his involvement although his name is now on the application form. He said it had been requested by the planner and it is normal protocol. If planners need further information they let you know. It is a condition of a planning or building warrant application. Tom said that an agent or a surveyor acting as an agent for co-proprietors has a duty to be familiar with how local authority planning policy is applied. Sean said he agreed to an extent, but they need to take guidance from Planning when they submit documents, and Planning requested at that point that they wanted a tree survey so that was when the tree survey was instructed.

Tom asked Sean what reason, in planning terms, he could give for the community council withdrawing its objection, to which Sean replied that under the Wildlife and Countryside Act there is a condition for a protected species survey if planning permission is to be given. He said that regarding the pruning, or trimming, that was due to inconsistencies in the documents and if it would assist they could put on the planning portal a covering letter detailing the difference between the tree survey and what is going to be proposed on the planning application. Tom said that written confirmation of what had been said would make a difference.

He quoted from his reply to an email from one community councillor after circulation of the video and pictures of water damage Ailie had sent to the community council: 'We can all feel concern and sympathy for the problems of water ingress that are being experienced here, but this isn't a planning matter', and 'The evidence is also highly selective. At around 8:00pm on 30th of May, there was a short shower, about 30 minutes, of exceptionally heavy rain. This is when the video was filmed. It does not represent normal conditions. The community council is a statutory consultee, and we can ill afford to let professional advisers ignore planning policies protecting the natural environment. Some of us have fought for years to get the Council to first of all adopt such policies and now to take them seriously.' Tom said that the next bit echoes earlier points made about the first planning application and the responsibility of the applicants' agent and concludes: 'I think we owe it to the wider community to protect the natural environment as much as we can from this sort of abuse. Those seeking the withdrawal of our objection . . . should have been [since last August] putting pressure on their agent to do their job properly, correcting the applications so as to nullify objections. Instead . . . a fresh crop of objections have been submitted in response to a new and newly defective planning application. . . . Even if we were to withdraw our objection, the application would not necessarily be determined any quicker. We would've abandoned what very limited guarantee we currently have over the applicants' agent respecting planning policies intended to protect the natural environment.'

Tom then clarified the difference between material considerations and non-material considerations by quoting from the 'Comment on planning applications' page on the Glasgow City Council website: 'Material considerations are the issues we can consider when assessing a planning application. They include whether or not it is contrary to the development plan and the impact on the character and setting of a conservation area.' Non-material considerations are 'issues that cannot be taken account of and cannot influence our [GCC's] decision on an application'. The ones that could not have any effect, and Tom did not think any applied, would be 'impact on property values' and 'legal issues such as feu restrictions, land ownership disputes, and matters covered by building regulations or other legislation'. Tom said that more detail is available in Scottish Government Circular 3 of 2013, Development Management Procedures, Annex A of which adds: 'views of statutory and other consultees [community councils are statutory consultees], legitimate public concern [which would here apply to the other six objectors]' and these views have to be 'expressed on relevant planning matters'. 'The basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings, which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss.' Tom then asked again if there were any material planning grounds for withdrawing the objection.

Ailie said she wanted to clarify what she had said earlier about Planning. Nobody had told them anything was not in order in the planning application. Her communication with Planning was at a time when she could not get Sean and she had asked these simple questions: 'We had seen the objections state that the application's not on the portal, could they confirm the position, that the full tree survey isn't on the portal, could they confirm the position and that a protected species survey was required?' She had received a reply: 'The application is and always has been on the portal. Some representations received indicated the form wasn't there and that's been rectified.' Tom agreed with that. Ailie continued: 'The tree survey documents are in the public portal, as you refer to, some have been redacted, but all the information is there. I don't know why it would've been redacted, as you said.' Tom said the tree survey had not been redacted. The tree survey had not been there at all. Ailie said: 'Well, this is what this says and, "in conversation with our tree officer, it is our view that a protected species survey is not required and is covered by the tree survey." . . . That's what I was referring to. I'm not saying they've said it'll pass. I'm saying they've said that what was needed was there.'

Ailie then asked Tom: 'Given that what you've quoted to us seems to come to the conclusion that, as long as we're not doing anything that isn't protecting the environment, I would hope you would hear from us that nothing we intend to do is going to damage the environment?' Tom said he needed a material planning ground before the community council could withdraw its objection. At Ailie's request, Sean said he would put something in writing to the community council on the owners' behalf within the next 24 hours.

In reply to a question from Tom about whether any errors had been identified in the community council's grounds of objection or had any new planning information become available, Sean said that to cover the confusion about tree felling he would get a covering letter uploaded to the portal explaining the situation about the trees and that no damage or felling is intended.

Ailie asked Tom about the relevance of somebody else's objection being withdrawn to the community council withdrawing its objection. Tom said that it would mean that there would be a difference in whether or not the six objections remained, because the Scheme of Delegation for the Council identifies that delegated authority cannot be exercised when there are six or more objections, if the officer wants to grant, or six or more letters of support, if the officer wants to refuse. Ailie said she was not sure why the community council could not remove its objection on the basis that a neighbour has said she will remove hers. Tom said that what the neighbour has reportedly said is irrelevant as he can only take into account what is on the planning portal at the moment, which is a total of seven objections. In further discussion on this point, Tom said any decision the community

council would make would be independent of the neighbour's decision. Ailie said that all but one of the co-owners at the community council meeting had been at the meeting when the neighbour had assured them that she planned to remove her objection. Tom said that he could not alter his view until it was reflected in something that was on the planning portal. He repeated that he was very sorry for the position the co-owners found themselves in, but it was not the fault of the objectors. It was the fault of the firm that Sean works for rather than Sean himself. All that could be done is to note that, given that no errors had been identified in the objection and that no new information in planning terms had been made available, then the objection should remain in place. Tom then asked if anybody on the community council disagreed with that statement.

Ailie and then Sean said that, although they are under protection, nesting pigeons can be moved under General Licence. Tom said that that was at odds with advice in Supplementary Guidance 7 and also with advice from the Scottish Government, and that the primacy of the provisions of the development plan is what matters.

In reply to Ailie's question regarding what assurances we would need, Tom said: 'No work at all to be undertaken on either the larch tree or the rowan in the front garden of the flat 0/1. You say that the larch needs pruned on the building side but the larch leans out from the building soon after rising up from its rootstock so would need very little pruning at all'. Regarding the rowan he said: 'From what you have said this evening the rowan will be ok but we would need confirmation in writing. There should be no scaffolding in the garden while the wood pigeons are nesting; an explanation given for why no protected species survey had been carried out; and the absolute minimum of pruning on the ash, hawthorn and elder in the back communal garden for scaffolding. Those are the details of the things that we need confirmation on. The branches of the ash that affect the gutters could be removed.' Tom said he did not understand a reference in both the tree survey and in the application drawings to pruning the bottom metre of various trees. This should not be done for either the hawthorn or the elder, as previously recommended.

Given that there are no errors in the objection and no new information in planning terms has been made available, then the objection should remain in place. He then proposed that the position could change if the information asked for was supplied and then discussed at a special meeting, given that the next meeting of the community council was not until September. As there were no contrary voices from members of the community council this was taken as agreed.

Gerry thanked the co-owners for their attendance and invited them to stay for the rest of the meeting if they wished. He said that when the issues that have been discussed have been addressed, then the community council will be in a position to call a special meeting. He repeated that the community council does not object to the work being carried out and Tom said that the objection is only to do with the environmental aspect of the works. Ailie thanked the community council for hearing the owners' views and for the offer of a special meeting and asked Sean to send the appropriate information by return. There was discussion about dates for the special meeting and the notice required to be given, which Tom discovered was 'at least seven days prior' according to the Scheme for the Establishment of Community Councils. He agreed with Gerry that a special meeting has a single item agenda that has a specific motion to be discussed and voted upon. There was also discussion about Diane's suggestion that, in view of the urgency and the water damage to the building, if Tom is satisfied with what comes in writing, then he be given sole authority to withdraw the objection, but it was agreed that this would be too much of a responsibility for him to carry alone. Ailie asked if the special meeting could then be arranged now, but Tom said that the process could not begin until the information is received from Sean. Until something is in writing, it does not mean anything legally. If the community council were to decide something in response to something Sean had said, the minutes of its meeting would not stand much chance of enforcement against Ramsay McMichael. The position of Ramsay McMichael needs to be known before a special meeting can be called. Ailie thanked the community council for its time, said she hoped it would look favourably on the matter and then left the meeting.