

# REPORT OF HANDLING

<b>Ref No:</b>	15/01097/APP	<b>Officer:</b>	Lisa Macdonald
<b>Proposal Description/ Address</b>	Change of use of land from public park land to garden ground and erect a 1.8 metre high fence 80 Mannachie Grove Forres Moray IV36 2WG		
<b>Date:</b>	23.07.2015	<b>Typist Initials:</b>	LMC

RECOMMENDATION		
Approve, without or with condition(s) listed below		N
Refuse, subject to reason(s) listed below		Y
Legal Agreement required e.g. S,75		N
Notification to Scottish Ministers/Historic Scotland		N
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS		
Consultee	Date Returned	Summary of Response
Contaminated Land	26/06/15	No objection
Environmental Protection Manager	17/07/15	No objection
Environmental Health Manager	26/06/15	No objection

DEVELOPMENT PLAN POLICY		
Policies	Dep	Any Comments (or refer to Observations below)
Whole of Policy 1	N	
Whole of Policy 2	N	
E4: Green Spaces	Y	
Forres - ENV1 Public Parks/Gardens	Y	
IMP1: Development Requirements	Y	
Moray Local Development Plan 2015		
E5: Open Spaces	Y	
IMP1: Developer Requirements	Y	
Forres ENV1: Public Parks and Gardens	Y	

REPRESENTATIONS		
Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		

Summary and Assessment of main issues raised by representations
Issue:
Comments (PO):

## **OBSERVATIONS – ASSESSMENT OF PROPOSAL**

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the approved Moray Structure Plan 2007 (MSP) and the adopted Moray Local Plan 2008 (MLP) unless material considerations indicate otherwise. The main planning issues are considered below.

On 24 June 2015 the Moray Council resolved to start using the Moray Local Development Plan (Modified Plan) 2015 as a material consideration for development management purposes, including the determination of planning applications until such time as the Moray Local Development Plan (Modified Plan) 2015 is formally adopted, at which point it will replace the current development plan (as described above).

This means that whilst applications and other related enquiries will continue to be assessed against the policies and proposals of the approved Moray Structure Plan 2007 and the adopted Moray Local Plan 2008, the terms of the Moray Local Development Plan (Modified Plan) 2015 including all policies and designations will also require to be taken into account when decisions are made on proposals after 24 June 2015. As a material consideration, the Moray Local Development Plan (Modified Plan) 2015 represents a more up-to-date version of the Council's intended planning policy and can be used to both support or reject any application.

### **The Proposal**

This application seeks permission for a change of use from amenity land to garden ground and for the erection of a 1.8m high fence around the site. A gate is to be provided in the fence to provide access to the garden from the rear.

### **The Site**

The site is an area of approximately 90 m<sup>2</sup> at the rear (north) of 80 Mannachie Grove. The site is part of the Forres ENV1 designation in the Moray Local Plan (MLP) 2008 and the Moray Local Development Plan (MLDP) 2015. The site is part of a spur from the main part of the open space to the west. The spur provides access to the main part of the open space from the houses beyond.

### **Planning History**

The applicant notes in supporting information that similar applications have been supported in the past and argues that this sets a precedent. The garden ground at number 80 Mannachie Grove has already been extended through the grant of Planning Permission (05/02146/FUL granted 27/09/05) for a change of use from park land to garden ground. A similar application (05/02576/FUL granted 08/11/06) was also granted to the north at 43 Mannachie Grove. While every application is considered on its own merits the planning history is a material consideration and has formed part of the assessment of this application. However, the previous two applications were considered under the Moray Local Plan 2000 and the area was not covered by the ENV designation in that plan. The current Local Plan which was adopted in 2008 was the first to afford this area protection under the ENV designation. Given that there is been a material change in policy the planning history is not considered to set a precedent in this case.

## Principle of Development

The site is part of the Forres ENV1 designation in the Moray Local Plan (MLP) and the modified Moray Local Development Plan (MLDP). The ENV designations represent protected open space which contributes to the environment and amenity of Forres. MLP policy E4 and MLDP policy E5 make clear that proposals that would result in the loss of land covered by the ENV designation will be refused unless the proposal is for a public use that outweighs the value of the site or would be ancillary to the principal use of the site and would enhance use of the site for sport and recreation. Other tests follow but are only applied where the first test is met. In this case the proposed use would remove the land from public use for entirely private purposes and would block access to the rest of the ENV designation from this part of the housing scheme. This area of open space would simply be lost and there would be no enhancement of the wider designation for sport or recreation.

The applicant argues that the area in question is a small part of the overall ENV designation and contributes little in terms of amenity. While the applicant's views are noted it is considered that this area does contribute to the value of the wider designated site and to the amenity of the area as a whole. The spurs of green space from the main part of the ENV designation provide separation between the clusters of houses and allow access to the open space from the houses beyond. These green corridors contribute to the character and amenity of the area and ensure that the wider ENV is well connected. While the application site represents a small portion of the ENV designation it makes a vital contribution in providing a link to the wider designated site and contributes to the character and openness of the surrounding development.

The applicant argues that enclosure is required to counter problems of dog fouling and littering. It is recognised that these issues present challenges in open space but measures can be implemented to address these problems and they do not in themselves justify the loss of open space.

The applicant notes that other points of access are available. While this is true, open space should be accessible and well connected throughout and any loss of access undermines the quality of the overall designated site.

The proposal if approved would lead to a loss of open space protected by the ENV designation and would prevent access to the remainder of the ENV designation from houses to the north. The loss of open space and connectivity would erode the character and amenity of the area and would go against the principles of MLP policy E4 and MLDP policy E5 which seek to protect open space for the benefit of the community. The proposal is contrary to policy and as such is recommended for refusal.

## Recommendation

The development if approved would lead to the loss of part of the protected by the Forres ENV1 designation and would restrict access to the area from the houses beyond. The proposal is contrary to policy and is recommended for refusal.

## OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

## HISTORY

Reference No.	Description			
05/02146/FUL	Change of use of land from public park land to garden ground and erect 1.8 metre high fence at 80 Mannachie Grove Forres Moray IV36 2WG			
	Decision	Permitted	Date Of Decision	27/09/05

05/00489/DCG	Disposal of Council ground at 80 Mannachie Grove Forres Moray IV36 2WE			
	<b>Decision</b>	ID/PE Answered	<b>Date Of Decision</b>	17/05/05

ADVERT			
<b>Advert Fee paid?</b>	<b>Yes</b>		
<b>Local Newspaper</b>	<b>Reason for Advert</b>	<b>Date of expiry</b>	
Forres Gazette	Departure from development plan	21/07/15	
PINS	Departure from development plan	21/07/15	

DEVELOPER CONTRIBUTIONS (PGU)	
<b>Status</b>	<b>N/A</b>

DOCUMENTS, ASSESSMENTS etc. *		
* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc		
Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name:	Supporting Statement (16/06/15 & 14/07/15)	
Main Issues:	<ul style="list-style-type: none"> <li>The land is owned and maintained by the applicant</li> <li>The site is a small grassed area with limited amenity value</li> <li>A precedent for change of use has been set by previous applications (including 05/02146/FUL which changed allowed the change of use of surrounding land to extend the applicant's garden</li> <li>At the time of the 2005 the applicant was encouraged to apply for a change of use across the all the land in his ownership but chose not to so as not to hold up the application</li> <li>The area is better maintained than the surrounding land which is maintained by the Council</li> <li>The area is used as a short cut to the houses beyond and is subject to dog fouling and litter dropping</li> <li>Alternative accesses to the open space are available</li> </ul>	
Response:	<ul style="list-style-type: none"> <li>Material points raised by the applicant are dealt with above</li> <li>The applicant's comments in relation to land ownership and the standard of maintenance carried out by the Council on the remainder of the ENV designation are noted but are not material considerations.</li> </ul>	

S.75 AGREEMENT		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		

Location where terms or summary of terms can be inspected:

**DIRECTION(S) MADE BY SCOTTISH MINISTERS** (under DMR2008 Regs)

Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			