Abstract: This report deals with planning application No. 08/00853/FUL for the erection of a boundary fence for Mrs McDowell at 21 The Mall, Montrose, Angus, DD10 8NN. This application is recommended for approval.

1 INTRODUCTION

1.1 Full planning permission is sought in part retrospectively for the erection of a boundary fence for Mrs McDowell at 21 The Mall, Montrose.

1.2 The application site is situated at the corner of The Mall and Mall Park Road. The building subject of this application is a two storey, detached dwelling with a plot measuring some 937 square metres in area. It is of traditional construction with modern additions. The property is located within an established residential area and is bound to the north by the roadway Mall Park Road, to the east by 26 Mall Park Road, to south by Mall House and to the west by the roadway The Mall. The boundary treatments of the property on the affected elevations are formed on the northern boundary by a red brick built wall which rises from 0.7 metres to 1.65 metres towards the rear of the property. The eastern boundary of the property is formed by an approximately 1.2 metre high stone and concrete block built wall.

1.3 The proposal involves the erection of a 0.45 metre high close boarded timber fence on top of the existing red brick built wall along the northern boundary and the addition of a similar height and style fence fencing on top of the boundary wall which runs along the rear/eastern boundary of the property to achieve a height of 1.8 metres.

1.4 The site is located within the Montrose Conservation Area and the application has been advertised accordingly.

2 RELEVANT PLANNING HISTORY

2.1 There is no planning history of direct relevance to this planning application. However planning permission has previously been granted for alterations and extensions to the dwellinghouse.

3 APPLICANT'S CASE

3.1 No supporting information has been submitted by the applicant.

4 CONSULTATIONS

4.1 No adverse comments have been received from statutory consultees.
4.2 The Head of Roads has no objection to the proposed development.

5 LETTERS OF REPRESENTATION

5.1 Two letters of representation have been received and are attached to this report. The main issues raised relate to:

- **The fence has been constructed prior to permission been granted** - This is the case and this Division subsequently requested the submission of a planning application. It is regrettable that the application has been made retrospectively however it is perfectly proper for the Council to now consider such an application. An application cannot be refused simply because it has been made retrospectively; as with any other planning application it must be considered against the relevant statutory tests.

- **The height of the proposed fence** - This will be discussed under planning considerations.

- **Impact on general area** - This will be discussed under planning considerations.

- **The construction of the fence and workmanship of the gates.** – The quality of the workmanship is not a material planning consideration. Similarly the structural stability of the wall is a matter for Building Standards and as such is not material to the consideration of this planning application.

- **The formation of the access** - This will be discussed under planning considerations.

6 PLANNING CONSIDERATIONS

6.1 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.

6.2 Given that this application for planning permission relates to subjects within a conservation area, namely Montrose Town Centre (Outstanding) Conservation Area, Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of that area in determining this application.

6.3 In this case the development comprises:

- Dundee and Angus Structure Plan (Approved 2002)
- Angus Local Plan (Adopted 2000)

The Development Plan is current and up-to-date and in this respect merits considerable weight in the determination of the proposal.

6.4 Although the Development Plan is current and up-to-date, Angus Council has been undertaking a review and roll forward of the ALP and the Finalised Angus Local Plan Review (2005) (FALPR) was approved by Angus Council at their meeting on 15 December 2004. The FALPR establishes policies and proposals for the period to
2011, taking into account the guidance from the DASP. Although not yet part of the statutory Development Plan the FALPR (including Committee approved modifications) has reached the stage where it is a material consideration to be taken into account in the determination of this planning application. In this report policies of the FALPR have been referred to when the said policy is materially different to the ALP to the extent that, as a consequence the recommendation contained within this report has been substantially influenced.

6.5 The main policy considerations for the determination of these applications are contained in the Adopted Angus Local Plan 2000. Of particular relevance are the following:-

**Policy ENV 5: Development in Existing Built-Up Areas**

*Within defined development boundaries planning applications for new development on sites not identified on the inset Proposals Maps will only be permitted where the proposals accord with the Development Strategy and other policies of the Local Plan. Proposals leading to significant loss of amenity and character of the surrounding area will not be permitted.*

**Policy ENV 31: Memorandum of Guidance on Listed Buildings and Conservation Areas**

Policy ENV31 aims to ensure that the technical and design guidance produced by Historic Scotland in relation to built heritage Management is taken into account in the formulation of development proposals. This policy states:

*Angus Council will assess all development proposals which affect the built heritage in the context of the Memorandum of Guidance on Listed Buildings and Conservation Areas.*

**Policy ENV37: New Development in Conservation Areas**

Policy ENV37 aims to ensure that development proposals in Conservation Areas preserve and enhance the character and appearance of Conservation Areas through the use of appropriate materials, designs, colours and finishes. This policy states:

*Development proposals within Conservation Areas or affecting the setting of such areas will be supported where they:-*

(a) **respect the character and appearance of the area in terms of:-**

- scale, proportions and massing;
- layout, grouping and setting;
- detailing and materials.

(b) **contribute positively to the setting of the area;**

(c) **maintain important open spaces or important views within, into or out of the area;**
(d) retain particular features which contribute to the character and appearance of the area;

- walls and other means of enclosure;
- ground surfaces;
- natural features such as trees and hedgerows.

(e) accord with the Character Statement of the area.

Policy H21: Residential Character and Amenity

Development proposals which have a significant adverse affect on the character and amenity value of existing housing will be resisted. Applications will only be acceptable where they are compatible with established housing use.

6.6 The Local Plan also indicates that further guidance is provided in the Council’s Advice Notes: 20 Listed Buildings and Conservation Areas and 24: Residential Boundary Treatment.

6.7 The key issues in this case are whether the fence will have an adverse impact on the character and appearance of the area, including the conservation area; and whether the proposal will have an adverse impact on the amenity of neighbouring properties. Concern has also been raised regarding road traffic safety and that it is also relevant to the consideration of the application.

6.8 In relation to the visual impact of the fence and its impact on the character of the conservation area it is noted that there is presently a red brick boundary wall that extends from approximately 0.7 to 1.6 metres in height around the boundary of the property. The proposal involves attaching a timber screen to the top of the wall, this extends some 450mm above the height of the existing wall where it abuts Mall Park Road and at most approximately 0.9 metres above the wall where it abuts the garden area of 26 Mall Park Road. The area that has further been enclosed by the addition of the fence comprises the rear and side garden of the dwellinghouse. The east elevation faces the garden area of the neighbouring property at 26 Mall Park Road. As this section of wall is slightly lower than the wall facing Mall Park Road the fence in this area will project slightly more than 450mm above the height of the existing wall however only a small section of that part of the fence will be visible from the public road as it is otherwise screened by 26 Mall Park Road itself. On this basis I do not consider that this section of the fence has any significant impact on the visual amenity of the area or indeed of the conservation area. The northern section of the fence directly abuts Mall Park Road. Whilst Advice Note 24 would not normally support the provision of a fence adjacent to a roadway at such a location, it is relevant to note that there is already a wall at this location and the fence sits approximately 450mm above the height of the existing wall. The applicants agent has indicated that the fence is to be stained and subject to agreement on the colour of the stain I do not consider that the fence has any significant impact on the character or appearance of the conservation area. On this basis I consider that the fence as erected is acceptable subject to condition requiring the colour of the stain to be agreed.

6.9 The second issue relates to the impact of the fence on the amenity of neighbouring properties. In this regard it is relevant to note that the section of fence facing that
would face the property to the east would be located in the region of 0.5 metres from the west elevation of that property. That elevation of the dwelling contains a window that would potentially be affected by the fence. However, it is relevant to note that the fence will not exceed a height of two metres and that window is presently screened by mature landscaping on the boundary. On this basis I do not consider that the proposed fence would significantly reduce daylight to that window or be any more imposing than the existing landscaping. It is also relevant to note that a fence of this height in this location would not, under normal circumstances require planning permission; permission is only required in this case as it is located within a conservation area. On this basis I do not consider that the proposal will have an adverse impact on the amenity of neighbouring properties to a level that would justify refusal of this planning application.

6.10 Representation has been received in relation to the formation of the access to the rear garden area. A contributor has stated the access had been formed in the region of 3 years previously and was connected with previous works which have been undertaken to construct an extension to the property as approved in application 05/00618/FUL which provided for alterations and extension to the dwellinghouse. The works in relation to this application have now been completed and the rear garden area laid with grass. The access under normal circumstances would not necessitate an application and it is only the location of the dwellinghouse in a conservation area which necessitates an application for planning permission. The Head of Roads has indicated that he has no objection to the application and I do not consider that the access has any adverse impact on the character of the conservation area.

6.11 In summary, the proposal broadly complies with relevant policies and design guidance. The fence projects only a limited height above the existing wall and, once stained, I consider that the fence will reduce in prominence and the wall will remain the main focus of the streetscene. I have taken account of the representations from third parties but do not consider that these justify refusal of this proposal. There are no material considerations that would justify refusal of the application.

7 HUMAN RIGHTS IMPLICATIONS

7.1 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.

8 EQUALITIES IMPLICATIONS

8.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.
9 RECOMMENDATION

9.1 It is recommended that the application be approved subject to the following conditions.

1. That the development hereby permitted shall be begun before the expiration of five years from the date of this permission.
   
   Reason: In order to comply with the requirements of the Town and Country Planning (Scotland) Act 1997.

2. That no alterations or amendments be made to the details contained in the approved and docqueted plans unless so indicated by conditions attached to this consent or agreed in writing with the Planning Authority.
   
   Reason: For clarification purposes and for the avoidance of any possible misunderstanding.

3. That, a sample of the colour proposed for the stain to be applied to the fence, shall be submitted for the prior written approval of the Planning Authority within one month of the date of this permission. Thereafter the stain shall be applied in accordance with the approved details within three months of the date of the planning permission.
   
   Reason: To visually assimilate the fence with the red brick wall; in order to preserve and enhance the character of the building and the conservation area and to comply with Policies ENV 37 and ENV 49 of the Angus Local Plan, supplementary planning guidance and section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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.

P&T/DB/IAL
5 August 2008

Eric S. Lowson
Director of Infrastructure Services