



## MORAY LOCAL REVIEW BODY

15 FEBRUARY 2024

### SUMMARY OF INFORMATION FOR CASE No LR297

**Planning Application 23/01062/APP – Change of use of open land to private garden at 2 Duke Street, Portgordon, Buckie, Moray**

#### **Ward 4 – Fochabers Lhanbryde**

Planning permission was refused under the Statutory Scheme of Delegation by the Appointed Officer on 7 November 2023 on the grounds that:

The proposed change of use of an area of Open Space to domestic garden ground is contrary to the Moray Local Development Plan (2020) and National Planning Framework 4 for the following reasons:

1. The proposals would result in the loss of an area of identified as Open Space under ENV5 within the Moray Local Development Plan (MLDP) 2020 which would fail to comply with MLDP 2020 Policies DP1 and EP5.
2. The ENV5 Green Corridor forms part of the old railway/cycle path corridor which contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the site makes up a small part of the green corridor, piecemeal erosion can negatively impact on the quality and character of the ENV and the role it plays in the setting of Portgordon and wider green networks and therefore the proposals would also fail to comply with NPF4 Policy 20 as the overall integrity of the green network would be fragmented.
3. The Tree Survey Report has not been updated to show the location of the rerouted footpath which would now go between the trees and an Arboricultural Method Statement has not been submitted which would set out how construction will minimise impacts on tree roots. As a result, MLDP 2020 Policy EP7 has not been complied with as additional information is required to confirm that the trees would be safeguarded from the impact of the construction of the path.

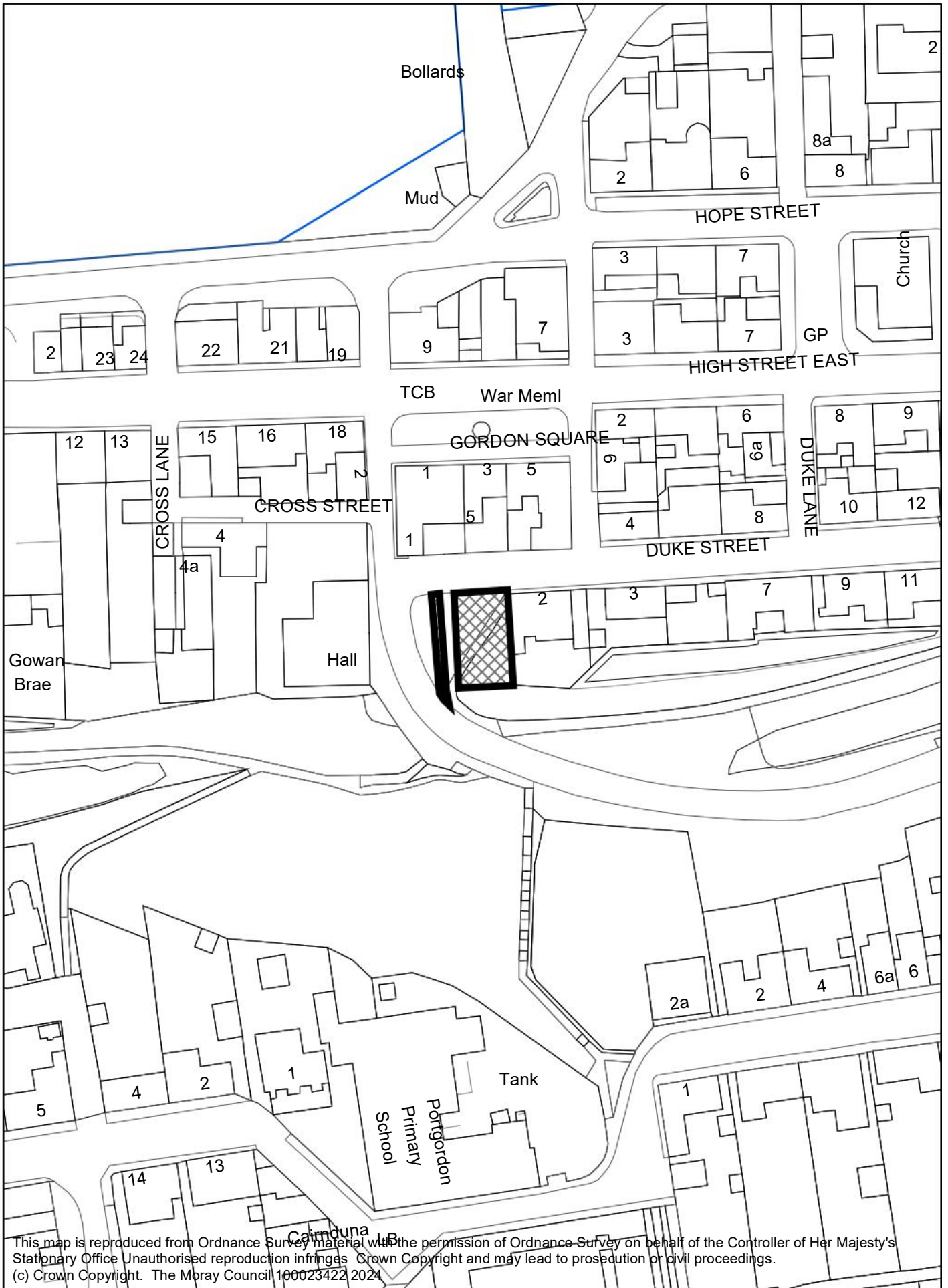
Documents considered or prepared by the Appointed Officer in respect of the above planning application are attached as **Appendix 1**.

The Notice of the Review, Grounds for Review and any supporting documents submitted by the Applicant are attached as **Appendix 2**.

There were no further representations from any of the Interested Parties.



# Location plan for Planning Application Reference Number : 23/01062/APP







## **APPENDIX 1**

# **DOCUMENTS CONSIDERED OR PREPARED BY THE APPOINTED OFFICER**





The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: development.control@moray.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100633288-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Type of Application

What is this application for? Please select one of the following: \*

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

## Description of Proposal

Please describe the proposal including any change of use: \* (Max 500 characters)

It is proposed to change the use of an area of land adjacent to 2 Duke Street Portgordon from open land to private garden.

Is this a temporary permission? \*  Yes  No

If a change of use is to be included in the proposal has it already taken place?  
(Answer 'No' if there is no change of use.) \*  Yes  No

Has the work already been started and/or completed? \*

No  Yes – Started  Yes - Completed

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mrs"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="2"/>
First Name: *	<input type="text" value="Audrey"/>	Building Number:	<input type="text" value="2"/>
Last Name: *	<input type="text" value="Murray"/>	Address 1 (Street): *	<input type="text" value="2 Duke Street"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value="[REDACTED]"/>	Town/City: *	<input type="text" value="Portgordon"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="AB56 5RH"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="[REDACTED]"/>		

## Site Address Details

Planning Authority:	<input type="text" value="Moray Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="2 DUKE STREET"/>
Address 2:	<input type="text" value="PORTGORDON"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="BUCKIE"/>
Post Code:	<input type="text" value="AB56 5RH"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="864206"/>	Easting	<input type="text" value="339629"/>
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## Pre-Application Discussion

Have you discussed your proposal with the planning authority? \*

Yes  No

## Pre-Application Discussion Details Cont.

In what format was the feedback given? \*

Meeting  Telephone  Letter  Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) \* (max 500 characters)

Liaison with Moray Council Planning Department on previous applications, reference numbers, 22/00905/APP and 23/00695/APP

Title:

Ms

Other title:

First Name:

Fiona

Last Name:

Olsen

Correspondence Reference Number:

23/00695/APP

Date (dd/mm/yyyy):

08/06/2023

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

## Site Area

Please state the site area:

161.70

Please state the measurement type used:

Hectares (ha)  Square Metres (sq.m)

## Existing Use

Please describe the current or most recent use: \* (Max 500 characters)

Open land

## Access and Parking

Are you proposing a new altered vehicle access to or from a public road? \*

Yes  No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? \*

Yes  No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

0

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? \*

0

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

## Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? \*

Yes  No

Do your proposals make provision for sustainable drainage of surface water?? \* (e.g. SUDS arrangements) \*

Yes  No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? \*

Yes

No, using a private water supply

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

## Assessment of Flood Risk

Is the site within an area of known risk of flooding? \*

Yes  No  Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? \*

Yes  No  Don't Know

## Trees

Are there any trees on or adjacent to the application site? \*

Yes  No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

## Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? \*

Yes  No

If Yes or No, please provide further details: \* (Max 500 characters)

All garden waste will be composted on site

## Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? \*

Yes  No

## All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? \*

≤ Yes  No

### Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013 \*

≤ Yes  No ≤ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

### Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? \*

≤ Yes  No

### Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? \*

≤ Yes  No

Is any of the land part of an agricultural holding? \*

≤ Yes  No

Are you able to identify and give appropriate notice to ALL the other owners? \*

Yes ≤ No

### Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate B

# Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

I hereby certify that

(1) - No person other than myself/the applicant was an owner [Note 4] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or –

(1) - I have/The Applicant has served notice on every person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was owner [Note 4] of any part of the land to which the application relates.

Name:

The Moray Council The Moray Council The Moray Council

Address:

The Moray Council PO Box 6760, PO Box 6760, Elgin, IV30 1BX

Date of Service of Notice: \*

25/05/2022

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding;

or –

(2) - The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have/the applicant has served notice on every person other than myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. These persons are:

Name:

Address:

Date of Service of Notice: \*

Signed: Mrs Audrey Murray

On behalf of:

Date: 23/06/2023

Please tick here to certify this Certificate. \*

## Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? \*

Yes  No  Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? \*

Yes  No  Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? \*

Yes  No  Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? \*

Yes  No  Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

Site Layout Plan or Block plan.

Elevations.

Floor plans.

Cross sections.

Roof plan.

Master Plan/Framework Plan.

Landscape plan.

Photographs and/or photomontages.

Other.

If Other, please specify: \* (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *	≤	Yes	T	N/A
A Design Statement or Design and Access Statement. *	≤	Yes	T	N/A
A Flood Risk Assessment. *	≤	Yes	T	N/A
A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *	≤	Yes	T	N/A
Drainage/SUDS layout. *	≤	Yes	T	N/A
A Transport Assessment or Travel Plan	≤	Yes	T	N/A
Contaminated Land Assessment. *	≤	Yes	T	N/A
Habitat Survey. *	≤	Yes	T	N/A
A Processing Agreement. *	≤	Yes	T	N/A

Other Statements (please specify). (Max 500 characters)

## Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mrs Audrey Murray

Declaration Date: 23/06/2023

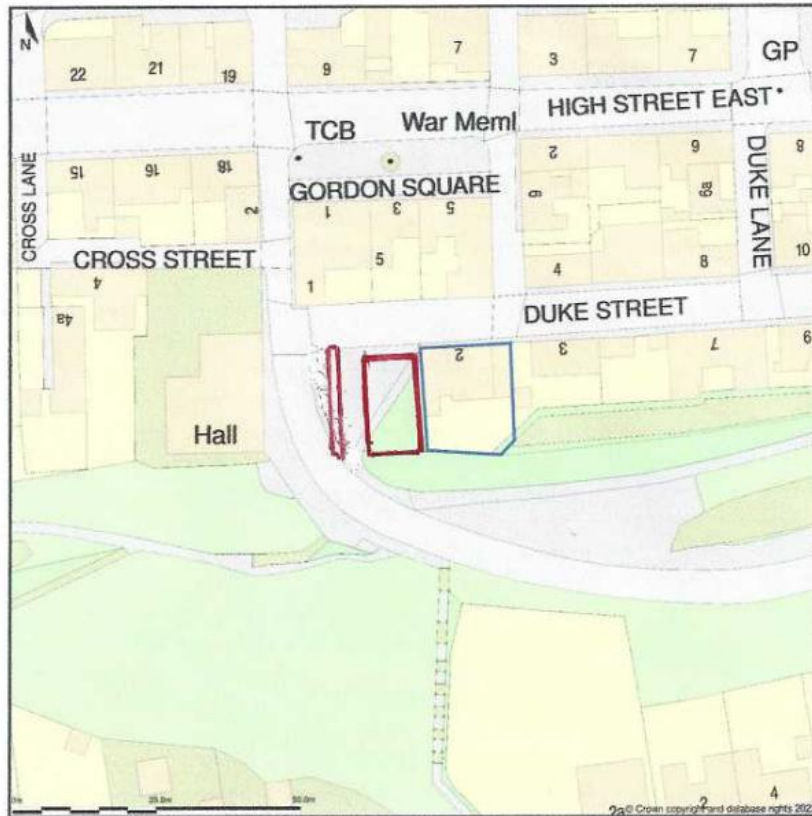
## Payment Details

Online payment: 023122

Payment date: 23/06/2023 14:19:59

Created: 23/06/2023 14:20

**2. Duke Street, Portgordon, Moray, AB56 5RH - Change of Use from Open Space to Private Garden**  
**Location Plan**



Location Plan shows area bounded by: 339551.33, 864126.88 339692.75, 864269.3 (at a scale of 1:1250), OSGridRef: NJ39626419. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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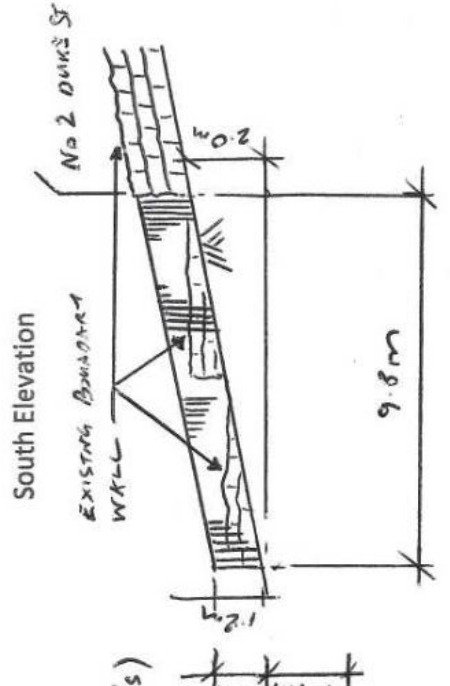
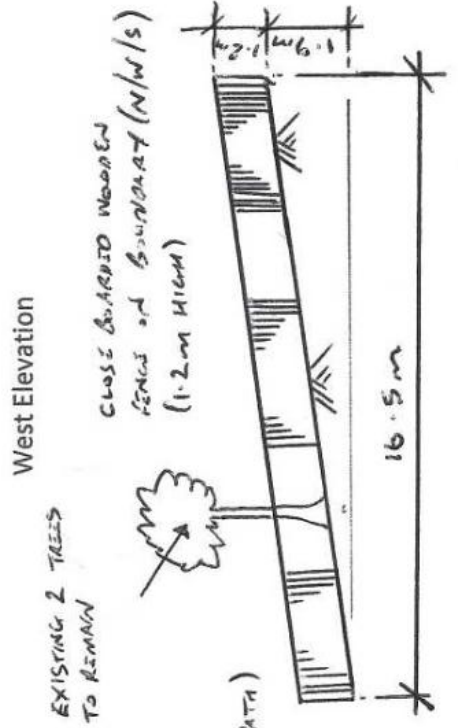
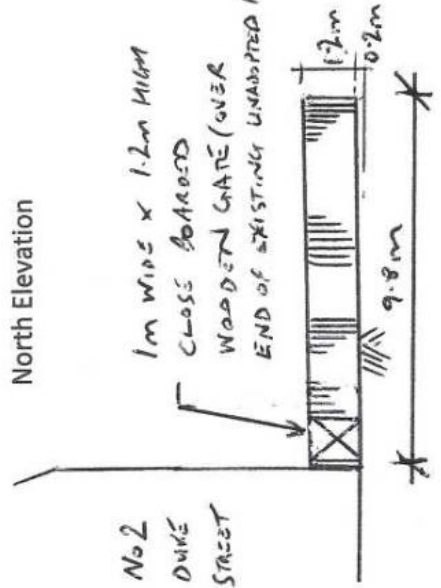
Drawing Title:

2 Duke Street, Portgordon, AB56 5RH  
Planning Application  
Change of Use to Private Garden

Applicant:

Mr & Mrs D. Murray  
2 Duke Street  
Portgordon  
Banffshire  
AB56 5RH

Drawn: DM Date: 20/04/23 Scale: 1:200  
Drawing No. 3 – Proposed Boundary Fence  
Elevations (North / West / South) 1:200





**2, Duke Street, Portgordon, Moray, AB56 5RH - Change of Use from Open Space to Private Garden - Site Plan**







Site Plan (also called a Block Plan) shows area bounded by: 339604.04, 864179.59 339640.04, 864215.59 (at a scale of 1:200), OSGridRef: NJ39626419. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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**Notes/Key:**

1.  Boundary of land owned by applicant.
2.  Boundary of land subject to change of use (from open space to private garden) and new unadopted footway.
3.  Close boarded wooden fence around new boundary, 1.2m high with 1m wide pedestrian gate in NW corner (Fence on southern boundary to be erected on Council land as agreed with Estates (ref letter dated 25/02/22))
4.  Existing trees (2no) to be retained as per tree report.
- 5.
6. New footway specification to be whin dust (semi tray excavation) as agreed with Council Planning and Transportation (Roads Development) teams (ref discussions 07/06/23) with construction to be as per drawing and specification no SD/WDP/02. 1.2m wide as per existing unadopted footway x approx. 19.0m long. 150mm thick type 1 granular sub-base and 25mm thick quarry whinstone surface course.



## Applicants Statement to Support the Planning Application for the change of use of the ground adjacent to 2 Duke Street Portgordon

We would be grateful if the history of the area of ground at the side of our house could be considered as part of our planning application as it has not always been a green corridor area. The land is currently owned by The Moray Council whose Estates Department have agreed to the sale, confirmed in May 2022.

Prior to 1977, the area had long been used as a private yard for industrial/commercial purposes (as noted from photographic records), leased by the Crown Estate Commissioners to a tenant. There had also been a building on the site.

In 1978 and then in 1979 the railway line to the west and then the east of the site was purchased by Moray District Council for the specific purpose of providing amenity areas such as a play park, bowling green and country type walks.

The land at Duke Street immediately west of No 2 was purchased by Grampian Regional Council Roads Department from The Crown Estate Commissioners in January 1977 for the specific purposes of constructing a road improvement, linked to the removal of the existing railway bridge.

Following our approach to Moray Council's Estates team in 2021, there was subsequent consultation and site meetings with Moray Council Roads Service who confirmed that on the basis that the existing substandard footway was rerouted at our expense and that visibility was maintained at the junction, Roads were prepared to declare the area was surplus to their requirements.

Following the land sale consultation phase, in their letter dated 25-05-2022, the Estates Team agreed to the sale of the land subject to planning permission.

It is appreciated that in the 2020 Local Plan, both the railway line and the grassed area west of 2 Duke Street are categorised as an 'ENV5 Green Corridor' area. However, while it is recognised that land use can change over time, the land purchased by the Roads Department in 1977 was not purchased specifically for amenity value. Indeed, during 2019 and 2020 due to financial constraints, Moray Council took the decision to stop cutting the grass in this area and, had it not been for our intervention in maintaining part of the area ourselves over this 2-year period, the area would have been left to grow wild, with no apparent alternative maintenance plan in place. This indicates to us that the area was not considered to be of high public amenity value and undermines the case for protection under the local plan.

The Moray Council's " Moray Food Growing Strategy 2020 " guidance document, developed to support the Moray Local Development Plan 2020, aims to ensure that there are more opportunities for people who would like to grow their own food. They recommend a variety of food growing spaces and many communal open spaces have been identified within this document as potential food growing sites.

There is a community garden in Portgordon at which we volunteer, but there is no allotment provision and at the moment there does not seem to be a plan to provide this in our area. The purchase of the land next to our house would allow us to grow the fruit and vegetables to sustain our family and also to have the space to compost our garden waste and some of the household waste as well as the positive impact the garden would have on our mental health and that of our visiting friends and family.

## Applicants Statement to Support the Planning Application for the change of use of the ground adjacent to 2 Duke Street Portgordon

We feel passionately about increasing the biodiversity of the area and this space would give us the opportunity to increase the area for birdlife, insects, bees, and amphibians which are all present in our existing small garden. We envisage using a variety of plants and flowers as well as creating small habitat areas for these creatures. The Moray Food Growing Strategy states as one of its actions to prepare and demonstrate how food growing can be integrated into green and blue networks to support biodiversity enhancement as well as to deliver allotment sites and food growing areas.

We noted the previous concerns of the Planning Department about the re-routed path impacting on the tree roots and have since commissioned an Arborist to complete a tree survey and report. The option of rerouting the path between the trees using a whip dust construction would support the requirement to protect the trees.

There were no objections to the previous planning application, (22/00905/APP), from neighbours, or the Hall Committee and we do have local support to see the ground used to grow food and increase the biodiversity of this area. We have been given compliments for 26 years now from villagers appreciating the floral display we have maintained at the side of our house and have shown our commitment to maintaining this area.

# TREE SURVEY REPORT

PROPOSED CHANGE OF LAND USE AT

**2 DUKE STREET  
PORTGORDON  
MORAY**

March 2023

Prepared by:

Struan Dalgleish Arboriculture  
The Bothy  
Drumoak  
Aberdeenshire  
AB31 5EP

[struan@sdarbor.com](mailto:struan@sdarbor.com)

For:

Derek and Audrey Murray  
2 Duke Street  
Portgordon  
Moray  
AB56 5RH

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APPENDIX 1 – Tree Survey Drawing

APPENDIX 2 – Tree Survey Schedule

Explanation of terms



## 1.0 INTRODUCTION

This tree survey and report relates to two (2) trees which occur within an area of public green space adjacent to the property at 2 Duke Street, Portgordon, Moray.

It was commissioned by the Derek and Audrey Murray, owners and occupiers of 2 Duke Street in support of Planning Application 22/00905/APP, to change the land use to private garden.

The survey and assessment has been carried out in accordance with BS5837:2012 '*Trees in relation to design, demolition and construction – Recommendations*' and sets out to achieve the following objectives.

1. To provide details of trees in close proximity to the planning application area.
2. To assess the impact the required re-alignment of the footpath and installation of new fence would have on the trees.
3. To make recommendations for tree management in light of the proposals.

The area to be included by the survey was indicated on a sketched site drawing, showing the proposed location of the re-aligned path and new garden fence.

Trees in close proximity were subject to detailed visual inspection undertaken from ground level by Arboricultural Consultant, Struan Dalgleish on 10<sup>th</sup> March 2023. Weather conditions at the time were dull and overcast with a thin layer of snow on the ground.

Tree numbers, trunk positions, crown spreads, and root protection areas have been added to the drawing using CAD. See Appendix 1 – Tree Survey Drawing.

Details of the trees and recommendations for their management have been recorded in spreadsheet format in Appendix 2 - Tree Survey Schedule.

**Author's qualifications:** Struan Dalgleish is a Chartered Forester (MICFor) and Chartered Environmentalist (CEnv). He holds an Honours Degree in Forestry and is a Professional Member of the Arboricultural Association. He has over 23 years of experience of arboriculture at a professional level.

## 1.1 Limitations

- ❑ The findings and recommendations contained within this report are valid for a period of twelve months from the date of survey (i.e. until 10<sup>th</sup> March 2024). Trees are living organisms subject to change and it is strongly recommended that they are inspected on an annual basis for reasons of safety.
  
- ❑ The recommendations relate to the site as it exists at present, and to the current level and pattern of land use. The degree of risk and hazard may alter if the site or its surroundings are developed or changed, and as such re-inspection and re-appraisal may be required.
  
- ❑ The report relates only to those trees shown on the attached Tree Survey Drawing in Appendix 1. Trees elsewhere have not been inspected.
  
- ❑ Whilst every effort has been made to detect defects within the trees inspected, no guarantee can be given as to the absolute safety or otherwise of any individual tree. Extreme climatic conditions can cause damage to even apparently healthy trees.
  
- ❑ Dense ivy, shrubs and epicormic shoot growth around the base of trees can make full and thorough inspection impractical. Tree assessment is based on the visible parts of the trees only. Further inspection maybe required following the cutting back of basal growth.
  
- ❑ This report has been prepared for the sole use of Derek and Audrey Murray and their appointed agents. Any third party referring to this report or relying on the information contained herein does so entirely at their own risk.

## 2.0 TREE SURVEY METHODOLOGY

The trees are easily identifiable and have not been tagged. They are numbered 1 and 2 on the Tree Survey Drawing and Schedule.

Trunk positions were measured on site with a 30m tape have been plotted onto the supplied site drawing, which has been digitized using CAD. While a reasonable degree of accuracy can be assumed, absolute precision cannot be guaranteed. Where a higher degree of accuracy is necessary trees and existing site features should be plotted by a topographical surveyor.

Crown spread, measured to the nearest 0.5m, and Root Protection Areas (RPA's), calculated in-accordance with BS 5837:2012 have been added to the drawing.

An assessment of the impact the proposed path and fence would have on the trees has been made. Tree work to accommodate construction and tree protection measures require during the process are identified.

## 3.0 TREE SURVEY RESULTS

### 3.1 General Description

The two semi-mature trees occur 2.6m apart, measured to trunk centres, on an area of flat and level mown grass which adjoins the gable-end of the house at 2 Duke Street.

The larger tree, a sycamore (*Acer pseudoplatanus*) is in good condition with a well-formed spreading crown. It is of healthy vigour and a small wound on the lower trunk, which has closed. The base of the trunk occurs 11.3m from the property wall to the east, 7.8m from the road to the north and 6.7m from the road to the west.

The smaller tree, a rowan (*Sorbus aucuparia*) is considered to be in fair condition. It displays a restricted spread, lower branches have been pruned and has a small wound, probably caused by mowing or strimming at the base. The base of the trunk occurs 14m from the house wall to the east, 8.1m from the road to the north and 4.1m from the road to the west.

The area of land is currently owned and managed by Moray Council.

### 3.2 Tree Condition and Preliminary Recommendations

No significant issues relating to the health and condition of the trees were noted and no essential preliminary tree work is required for reasons of safety.

The trees occur within a frequently accessed area and should be subject to routine inspection. It is recommended this is carried out by a suitably qualified and experienced arborist. on a 5-yearly period

Additional inspections may be required in the aftermath of severe storms.

### 3.3 Photographs

The photographs below show the trees at the time of assessment.



**Photo 1** – Trees in proximity of 2 Duke Street.



**Photo 2** – Taller semi-mature sycamore and smaller rowan.

## 4.0 TREES AND DEVELOPMENT

To help inform the development process the trees have been provided with a retention category and root protection area (RPA) in-accordance with BS 5837:2012 '*Trees in relation to design, demolition and construction – recommendations*'.

### 4.1 Tree Retention Category

Retention category is intended to give an indication of the value of the tree and its suitability for retention within the development context.

It grades the trees in terms of quality and takes account of health, condition, and future life expectancy.

Small or relatively young trees may receive a lower grading where they could be easily replaced.

Trees with a **Category A** grading are of highest quality and value and often have a life expectancy of +40 years.

Trees with a **Category B** grading are of moderate quality and value and often have life expectancy of +20 years.

Trees with a **Category C** grading are of low quality and value either due to their poor condition and limited life expectancy, or relatively young age.

Where trees are considered to have a <10 years' life expectancy they have been graded **Category U** and could be removed for reasons of good arboricultural practice.

#### **4.2 Root Protection Areas**

Root Protection Areas (RPA's) are areas surrounding the tree that contains sufficient rooting volume to ensure its survival.

These have been calculated in-accordance with BS 5837:2012 and are shown as a dark circle around the trunk position as shown on the Tree Survey Drawing.

RPA's have also been provided in the Tree Survey Schedule as the radius of a circle to be measured from the base of the trunk.

Where trees have grown-up next to physical barriers such as very hard compacted soils, deep foundations or water courses the development of roots may have been restricted.

The default position of BS 5837:2012 is that where tree health is to be protected new structures should be located outside the RPA.

#### **4.3 Arboricultural Impact Assessment and Tree Protection Plan**

The proposed site layout drawing has been used to assess the impact the construction would have on trees and the following comments made.

## 1) Impact of New Footpath on Roots

The proposed footpath, in the location shown on the drawing is to be constructed around 1m from the base of Tree 2, the rowan.

This appears likely to impact around 13% of the calculated Root Protection Area (RPA).

This relatively small incursion is likely to have a fairly minor impact on tree health, although it is possible the life expectancy will be reduced as a result of the work.

The tree is considered to be Category C – of low quality and value and of limited life expectancy.

It could be retained, and its condition monitored.

Replacement planting of 2 new rowan trees should be established nearby to mitigate for the impacts.

The base of Tree 1, the sycamore will be approximately 3.7m from the footpath and unlikely to be significantly impacted by the construction of the footpath.

## 2) Tree Protection Barrier

During construction a temporary Tree Protection Barrier should be erected to protect the undisturbed rooting area, trunk and branches of the trees.

The proposed layout of the Tree Protection Barrier is shown on the Tree Survey Drawing in Appendix 1.

A suitable Tree Protection Barrier could be constructed as illustrated over-page.

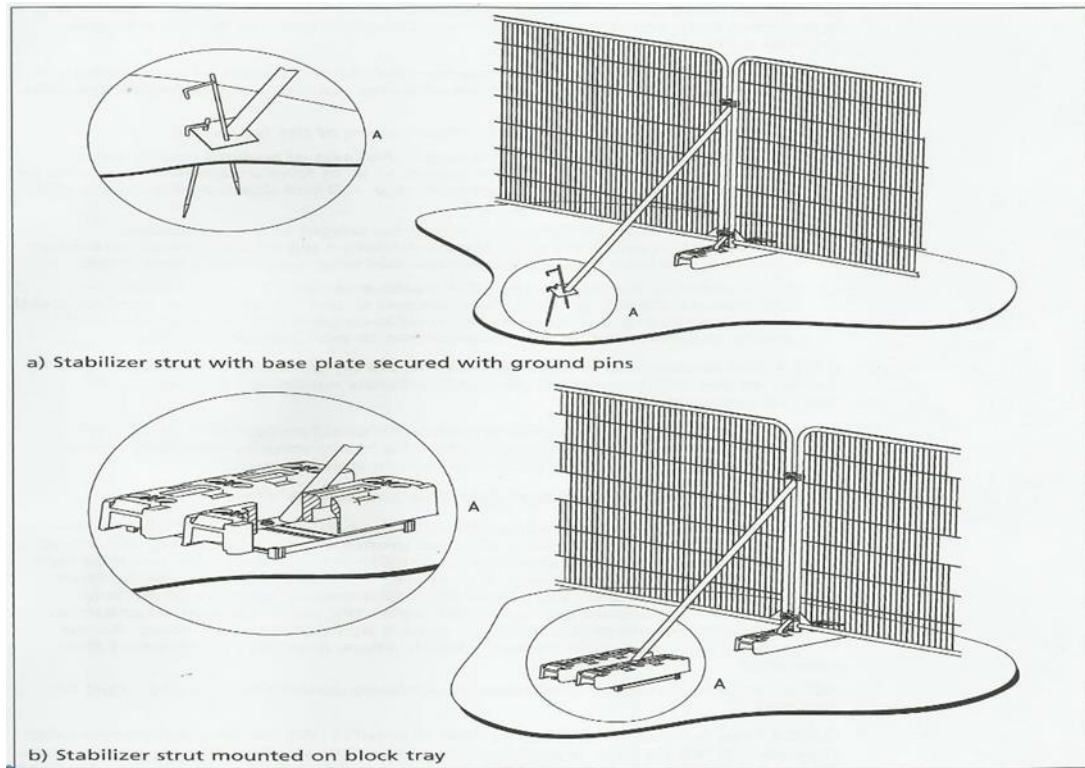


Figure 1 – BS 5837:2012 Tree Protection Barrier

### 3) Impact of New Fence

The new fence proposed is to be 1.2m tall and will be constructed beneath the canopy of the sycamore without the need for pruning.

To minimize the new fences impact on tree roots, excavation and the use of cement within the rooting area should be avoided.

Within the RPA fence posts should be supported on metal spiked feet driven into the ground.

### 4.4 New Tree Planting

There is significant scope within the area to establish new tree(s) to mitigate the impact re-aligning the footpath has on the rowan tree.

Trees of small to medium mature size would be best suited to the built-up area.



The planting of 2 rowan (*Sorbus aucuparia*) trees at locations identified on the Tree Survey Drawing is suggested.

The trees should be well suited to the site conditions and as native species will bring biodiversity benefits in the long term.

Tree planting should be carried out by a competent person on completion of the construction of the footpath.

Planting should be undertaken in a period of frost-free weather during the dormant season (October to March).

Young trees should be obtained from a local nursery as healthy 1.5m tall, light-standards.

The newly planted trees may require to be supported with a stake and where grazing rabbits maybe an issue suitable tree protection will be required.

Prior to digging a planting hole turf should be stripped from a 1m diameter circular planting area.

On completion of planting this area should be mulched with well composted wood chips to help retain soil moisture and provide organic material to encourage the establishment of the trees.

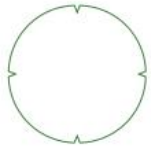
Mulch should be topped up annually and the mulched area kept weed free until the trees are well established.

Additional watering will be required during periods of drought.

## APPENDIX 1 – TREE SURVEY DRAWING

Key –

Scale: 1:125 at A4



Tree to be retained.



Root Protection Area (RPA) calculated in accordance with BS 5837



Location of proposed new tree planting

### BS 5837: 2012 Tree Category Grading Colour Coding



Category A tree - High quality and value: considered to make a substantial contribution (+40 years).



Category B tree - Moderate quality and value: considered to make a significant contribution (minimum of 20 years).



Category C tree - Low quality and value: currently in adequate condition to remain until new planting could be established (minimum of 10 years), or young trees with a diameter <150mm.



Category U tree - Any existing value would be lost within 10 years and which should, in the current context could be removed for reasons of sound arboricultural management.

## APPENDIX 2 – TREE SURVEY SCHEDULE

### Explanation of Tree Survey Schedule Terms

<b>Tree No.</b>	Identification number of tree as shown on drawing and schedule.
<b>Species</b>	Common name of species.
<b>Ht. (m)</b>	Height of tree assessed in metres
<b>Dia. (mm)</b>	Diameter at breast height, measured in millimetres at 1.5m.
<b>Crown Spread (m)</b>	Spread of branches from centre of trunk to drip line in N, E, S and W directions.
<b>Ht. Cl. (m)</b>	Minimum crown clearance above ground level, estimated in meters.
<b>Age class</b>	Young, semi-mature, mature, veteran.
<b>Condition</b>	Overall physiological and structural condition: Good, fair, poor, dead. See explanation over page.
<b>Comments</b>	General comments, made as required, relating to health, structural condition and form, highlighting any defects or areas of concern.
<b>Life Exp. (yrs)</b>	Estimated remaining contribution, estimated in years e.g. <10, 10-20, 20-40, +40.
<b>Retention Category</b>	BS 5837 category grading: Tree quality assessment – see explanation over page.
<b>RPA radius (m)</b>	Root Protection Radius calculated in accordance with BS 5837:2012
<b>Recommendation</b>	Tree work in the interest of good arboricultural management or to accommodate the development.

## Tree Condition Categories

Good	<ul style="list-style-type: none"><li>(1) Healthy trees with no major defects</li><li>(2) Trees with a considerable life expectancy</li><li>(3) Trees of good shape and form</li></ul>
Fair	<ul style="list-style-type: none"><li>(1) Healthy trees with small or easily remedied defects</li><li>(2) Trees with a shorter life expectancy</li><li>(3) Trees of reasonable shape and form</li></ul>
Poor	<ul style="list-style-type: none"><li>(1) Trees with significant structural defects and/or decay</li><li>(2) Trees of low vigour and under stress</li><li>(3) Trees with a limited life expectancy</li><li>(4) Trees of inferior shape and form</li></ul>
Dead	<ul style="list-style-type: none"><li>(1) Dead trees</li></ul>

## Category Grading

Categories for tree quality assessment, based on guidance given in British Standard BS 5837: 2012 'Trees in relation to design, demolition and construction – Recommendations

### Trees unsuitable for retention (see Note)

Category and definition	Criteria – Subcategories
<p><b>Category U</b></p> <p>Those in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years</p>	<p>Trees that have a serious, irremediable, structural defect, such that their early loss is expected due to collapse, including those that will become unviable after removal of other category U trees (e.g. where, for whatever reason, the loss of companion shelter cannot be mitigated by pruning)</p> <p>Trees that are dead or are showing signs of significant, immediate, and irreversible overall decline</p> <p>Trees infected with pathogens of significance to the health and/or safety of other trees nearby, or very low quality trees suppressing adjacent trees of better quality</p> <p><i>NOTE Category U trees can have existing or potential conservation value which it might be desirable to preserve.</i></p>

### Trees to be considered for retention

Category and definition	Criteria – Subcategories		
<p><b>Category A</b></p> <p>High quality and value with an estimated life expectancy of at least 40 years.</p>	<p>1 Mainly arboricultural values</p> <p>Particularly good example of their species, especially if rare or unusual; or those that are essential components of formal or semi-formal arboricultural feature (e.g. principle trees in avenues)</p>	<p>2 Mainly landscape values</p> <p>Trees, groups or woodlands of particular visual importance as arboricultural and/or landscape features.</p>	<p>3 Mainly cultural values, including conservation</p> <p>Trees, groups or woodlands of significant conservation, historical, commemorative or other value (e.g. veteran trees or wood-pasture).</p>
<p><b>Category B</b></p> <p>Moderate quality and value with an estimated life expectancy of at least 20 years.</p>	<p>Trees that might be in category A, but are downgraded because of impaired condition (e.g. presence of significant though remediable defects, including unsympathetic past management or storm damage), such that they are unlikely to be suitable for retention for beyond 40 years; or trees lacking the special quality necessary to merit the category A designation.</p>	<p>Trees present in numbers, usually growing as groups or woodlands, such that they attract a higher collective rating than they might as individuals; or trees occurring as collectives but situated so as to make little visual contribution to the wider locality.</p>	<p>Trees with material conservation or other cultural value.</p>
<p><b>Category C</b></p> <p>Low quality and value with an estimated life expectancy of at least 10 years, or young trees with a diameter &lt;150mm.</p>	<p>Unremarkable trees of very limited merit or such impaired condition that they do not qualify in higher categories.</p>	<p>Trees present in groups or woodlands, but without this conferring on them significantly greater landscape value, and/or trees offering low or only temporary/transient landscape benefit.</p>	<p>Trees with no material conservation or other cultural value.</p>



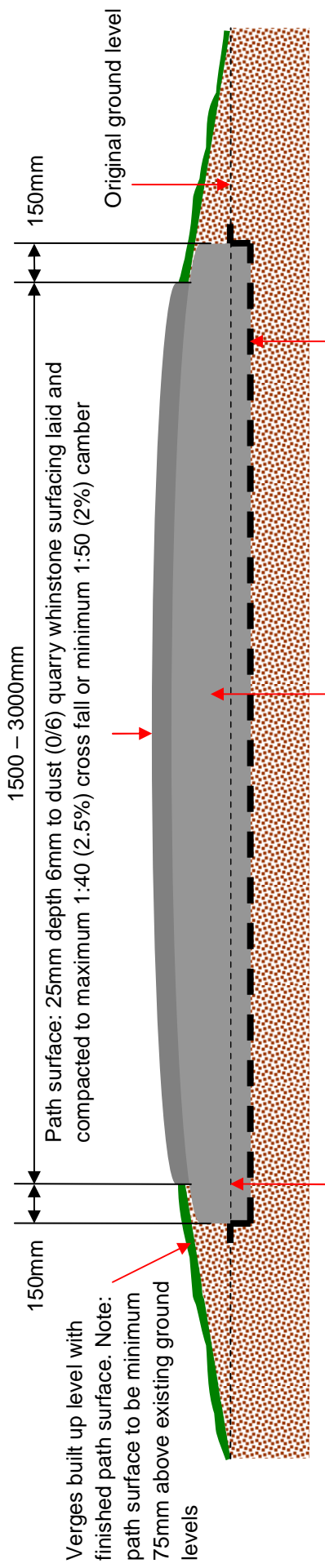
Tree No.	Species	Ht. (m)	Dia. (mm)	Crown Spread (m)				Ht. Cl. (m)	Age Class	Condition	Comments	Life Exp.	Retention Category	Root Protection Radius (m)	Recommendations
				N	E	S	W								
1	Sycamore	9	300	3	4	4	4	3	Semi mature	Good	Well formed. Old wound on lower trunk has closed.	40+yrs	B	3.6	1.2m tall fence to be erected beneath canopy. Within the RPA, fence posts should be supported by spiked metal bases driven into the ground to avoid the need for excavation and cement.
2	Rowan	6	120: 120	0.5	1	2	2	3	Semi mature	Fair	Restricted spread from fork near base. Small wound at base.	10-20yrs	C	2	Formation of proposed path would impact around 13% of the rooting area. This relatively small incursion is likely to have a fairly minor impact on the health of the tree in the short term. Its condition should be monitored. New planting of 2 rowans would be provided to mitigate the impact.





**Construction notes:**

1. Stripped turfs and excavated soil to be re-used to form verges and stabilise path edges.
2. Lay path base and surface with drag box if available.
3. Path base and surface to be laid to maximum 1:40 (2.5%) cross fall or minimum 1:50 (2%) camber and compacted to refusal using heavy vibrating roller (minimum 120 type roller recommended).
4. Surface regularity - maximum 10mm gap under 3.0 metre straight edge placed along the base surface and maximum 5mm gap for path surface.
5. Soft spots to be excavated and filled with lower quality sub base e.g. scalplings, crusher run, crushed demolition waste.
6. This drawing should be read in conjunction with specification details SPEC/WDP/02. Granular sub base to be produced according to SHW Clause 803.



Maximum tray excavation depth: 50mm

Path base: 150mm depth DTp Type 1 granular sub base laid and compacted to maximum 1:40 (2.5%) cross fall or minimum 1:50 (2%) camber. Optional base: 100mm depth scalplings, road planings or crusher run with 50mm depth Type 1 granular sub base or similar quality recycled granular sub base

Geotextile sheet (Install geogrid on top of geotextile sheet if formation level is soft)

This standard detail is indicative only and not intended to be relied upon in specific site cases. A designer should satisfy themselves of site conditions and vary details and dimensions to suit. Paths for All accept no liability for any inaccuracies or for any loss, expense, damage or injury or accident arising from the use or application of information contained here in.



# Whin Dust Path (Semi Tray Excavation) Standard Detail

Date: 08/06/11

Scale: Not to scale

Drawn by: Technical Officer

Drawing nr: SD/WDP/02

## SPECIFICATION DETAILS – SPEC/WDP/02

### Whin Dust Path

Note: These specification details should be read in conjunction with standard detail drawing SD/WDP/02 – Whin Dust Path (Semi Tray Excavation).

### Material Specification Details

<b>Sub base layer</b>	40mm (0/40) or 20mm (0/20) DTp Type 1 granular sub base. Optional base: scalpings, road planings, crusher run or crushed demolition waste with DTp Type 1 granular sub base or similar quality recycled granular sub base laid on top
<b>Surface layer</b>	6mm (0/6) quarry whin dust
<b>Geotextile (If required)</b>	Autoway 120 or alternative equivalent product grade (Terram 2000, Lotrak 16/15)
<b>Geogrid (If required)</b>	Auto Grid

### Construction Specification Details

#### Formation tray excavation

- Excavate the ground to expose sub soil and grade out irregularities to form 1.8m wide formation tray (width of formation tray for 1.8m wide path base with 1.5m wide path surface) to maximum depth of 50mm below ground levels.
- Formation tray should be rectangular in section with vertical sides and level base.
- Stripped vegetation and excavated topsoil to be stacked neatly either side of formation tray to form raised path shoulders.
- If soft spots are present, excavate the area below formation level until the sub grade is stable. Back fill with scalpings, crusher run or crushed demolition waste to formation level and compact to refusal.

#### Geotextile sheet installation (including geogrid if required)

- Lay and secure geotextile sheet in formation tray. Geotextile sheet should line the base and both sides. Overlap joining sheets by 1.0m.
- Lay and secure geogrid on top of geotextile sheet. Geogrid should not protrude up the sides of the formation tray. Overlap joining sheets by 1.0m.

#### Sub base layer

- Using a drag box lay 150mm depth of DTp Type 1 granular sub base upon the geotextile sheet in the formation tray to falls and levels, to form 1:50 (2%) camber or 1:40 (2.5%) crossfall. If no drag box is available, DTp Type 1 granular sub base should be laid, spread and raked to falls and levels using asphalt rake.

- Compact sub base layer thoroughly to refusal using a heavy ride-on tandem vibrating roller until full compaction is achieved (minimum 120 type roller recommended).
- Once sub base layer is compacted, check levels of the surface at regular intervals along the compacted sub base layer for consistent even surface regularity, which should be accurate to maximum gap of 10mm under a 3metere long straight edge, with no high or low points or hollows.
- Any part of the sub base layer deviating from the required level must be raked off or topped up with additional DTp Type 1 granular sub base and re-compacted to the correct levels.
- Check the finished compacted sub base layer is closed tightly with no exposed surface voids before laying the surface layer. If necessary, fill any voids with 6mm quarry whin dust.

### **Surface layer**

- Using drag box lay 25mm depth of 6mm quarry whin dust to falls and levels, to form 1.5m wide path surface with 1:50 (2%) camber or 1:40 (2.5%) crossfall along the centre line of compacted sub base layer. If no drag box is available, 6mm quarry whin dust should be laid, spread and raked to falls and levels using asphalt rake.
- Compact surface layer thoroughly to refusal using a heavy ride-on tandem vibrating roller and continue rolling non-stop until there is no roller marks in the finished surface (minimum 120 type roller recommended).
- Once rolling is finished, check levels of the surface at regular intervals along the compacted surface layer for consistent even surface regularity, which should be accurate to maximum gap of 5mm under a 3metere long straight edge, with no high or low points or hollows.
- Any part of the surface layer deviating from the required level must be raked off or topped up with additional 6mm quarry whin dust and re-compacted to the correct levels.

### **Landscaping**

- Both sides of path form and build up verges level with path surface using available topsoil and turfs to cover path base edges and to support path surface edges. Butt turfs tightly together to cover exposed roots and topsoil.
- Landscaped verges and edges should be finished level with path surface and taper down and away from the path surface to allow surface water to run off onto adjacent verges unimpeded by landscaped materials.



## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	10th July 2023
<b>Planning Authority Reference</b>	23/01062/APP
<b>Nature of Proposal (Description)</b>	Change the use of open land to private garden at
<b>Site</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133029785
<b>Proposal Location Easting</b>	339629
<b>Proposal Location Northing</b>	864206
<b>Area of application site (M<sup>2</sup>)</b>	162
<b>Additional Comment</b>	
<b>Development Hierarchy Level</b>	LOCAL
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=RWUJE1BGHFE00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=RWUJE1BGHFE00</a>
<b>Previous Application</b>	22/00905/APP 23/00695/APP
<b>Date of Consultation</b>	26th June 2023
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mrs Audrey Murray
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
<b>Agent Name</b>	
<b>Agent Organisation Name</b>	
<b>Agent Address</b>	
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Iain T Drummond
<b>Case Officer Phone number</b>	01343 563607
<b>Case Officer email address</b>	iain.drummond@moray.gov.uk
<b>PA Response To</b>	consultation.planning@moray.gov.uk

**NOTE:**

If you do not respond by the response date, it will be assumed that you have no

comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Data Protection - Moray Council is the data controller for this process. Information collected about you on this form will be used to process your Planning Application, and the Council has a duty to process your information fairly. Information we hold must be accurate, up to date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you.

For full terms please visit [http://www.moray.gov.uk/moray\\_standard/page\\_121513.html](http://www.moray.gov.uk/moray_standard/page_121513.html)

For full Data Protection policy, information and rights please see [http://www.moray.gov.uk/moray\\_standard/page\\_119859.html](http://www.moray.gov.uk/moray_standard/page_119859.html)

You can contact our Data Protection Officer at [info@moray.gov.uk](mailto:info@moray.gov.uk) or 01343 562633 for more information.

Please respond using the attached form:-

**MORAY COUNCIL**

**PLANNING CONSULTATION RESPONSE**

**From:** Estates, Central Services

**Planning Application Ref. No: 23/01062/APP**

**Change the use of open land to private garden at 2 Duke Street Portgordon Buckie Moray for Mrs Audrey Murray**

I have the following comments to make on the application:-

- |   | <b>Please</b>                        |
|---|--------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <b>X</b><br><input type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <b>X</b>                             |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/>             |
| (d) Further information is required in order to consider the application as set out below                                 | <input type="checkbox"/>             |

**Reason(s) for objection**

**Condition(s)**

**Further comment(s) to be passed to applicant**

**Further information required to consider the application**

**Contact: Cameron Queen**  
**email address: [cameron.queen@moray.gov.uk](mailto:cameron.queen@moray.gov.uk)**  
**Consultee: MC Estates**

**Date...26 June 2023.....**  
**Phone No ...07855146198.....**

<b>Return response to</b>	<b>consultation.planning@moray.gov.uk</b>
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Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.



## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	10th July 2023
<b>Planning Authority Reference</b>	23/01062/APP
<b>Nature of Proposal (Description)</b>	Change the use of open land to private garden at
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<b>Date of Consultation</b>	26th June 2023
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mrs Audrey Murray
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
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Please respond using the attached form:-

## MORAY COUNCIL

### PLANNING CONSULTATION RESPONSE

**From:** Transportation Manager

**Planning Application Ref. No: 23/01062/APP**

**Change the use of open land to private garden at 2 Duke Street Portgordon Buckie Moray for Mrs Audrey Murray**

I have the following comments to make on the application:-

	<b>Please</b>
(a) I OBJECT to the application for the reason(s) as stated below	<input type="checkbox"/>
(b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal	<input type="checkbox"/>
(c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below	<input checked="" type="checkbox"/>
(d) Further information is required in order to consider the application as set out below	<input type="checkbox"/>

#### **Condition(s)**

1. Prior to the erection of the new site boundary a replacement 1.2m wide footpath shall be constructed in accordance with the agreed specification at the location shown on 'Site Plan' drawing submitted 29 June 2023. Note – the footpath shall remain private and shall not be adopted by the Roads Authority.

Reason: To ensure acceptable development in the interests of road safety.

2. New boundary walls/fences fronting onto Duke Street shall be set back from the edge of the public carriageway at a minimum distance of 2.0m.

Reason: To ensure acceptable development in the interests of road safety.

3. The opening path of the new access gate shall be fully contained within the site and not encroach onto the public verge.

Reason: To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

#### **Further comment(s) to be passed to applicant**

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984.

This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing [roadspermits@moray.gov.uk](mailto:roadspermits@moray.gov.uk)

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

**Contact: AG**  
**email address: [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)**  
**Consultee: TRANSPORTATION**

**Date 30 June 2023**

<b>Return response to</b>	<b><a href="mailto:consultation.planning@moray.gov.uk">consultation.planning@moray.gov.uk</a></b>
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Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	10th July 2023
<b>Planning Authority Reference</b>	23/01062/APP
<b>Nature of Proposal (Description)</b>	Change the use of open land to private garden at
<b>Site</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133029785
<b>Proposal Location Easting</b>	339629
<b>Proposal Location Northing</b>	864206
<b>Area of application site (M<sup>2</sup>)</b>	162
<b>Additional Comment</b>	
<b>Development Hierarchy Level</b>	LOCAL
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=RWUJE1BGHFE00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=RWUJE1BGHFE00</a>
<b>Previous Application</b>	22/00905/APP 23/00695/APP
<b>Date of Consultation</b>	26th June 2023
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mrs Audrey Murray
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
<b>Agent Name</b>	
<b>Agent Organisation Name</b>	
<b>Agent Address</b>	
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Iain T Drummond
<b>Case Officer Phone number</b>	01343 563607
<b>Case Officer email address</b>	iain.drummond@moray.gov.uk
<b>PA Response To</b>	consultation.planning@moray.gov.uk

**NOTE:**

If you do not respond by the response date, it will be assumed that you have no

comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Data Protection - Moray Council is the data controller for this process. Information collected about you on this form will be used to process your Planning Application, and the Council has a duty to process your information fairly. Information we hold must be accurate, up to date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you.

For full terms please visit [http://www.moray.gov.uk/moray\\_standard/page\\_121513.html](http://www.moray.gov.uk/moray_standard/page_121513.html)

For full Data Protection policy, information and rights please see [http://www.moray.gov.uk/moray\\_standard/page\\_119859.html](http://www.moray.gov.uk/moray_standard/page_119859.html)

You can contact our Data Protection Officer at [info@moray.gov.uk](mailto:info@moray.gov.uk) or 01343 562633 for more information.

Please respond using the attached form:-

**MORAY COUNCIL**

**PLANNING CONSULTATION RESPONSE**

**From:** Aberdeenshire Council Archaeology Service

**Planning Application Ref. No: 23/01062/APP**

**Change the use of open land to private garden at 2 Duke Street Portgordon Buckie Moray for Mrs Audrey Murray**

I have the following comments to make on the application:-

- |   | <b>Please</b>                        |
|---|--------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <b>x</b><br><input type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <br>x                                |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <br><input type="checkbox"/>         |
| (d) Further information is required in order to consider the application as set out below                                 | <br><input type="checkbox"/>         |

**Reason(s) for objection**

None

**Condition(s)**

None

**Further comment(s) to be passed to applicant**

**Further information required to consider the application**

**Contact: Claire Herbert**  
email address:  
[archaeology@aberdeenshire.gov.uk](mailto:archaeology@aberdeenshire.gov.uk)  
Consultee: Archaeology service

**Date...04/07/2023.....**  
**Phone No .....01467537717**

**Return response to**

**consultation.planning@moray.gov.uk**

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**MORAY COUNCIL**

**PLANNING CONSULTATION RESPONSE**

**From:** Moray Access Manager

**Planning Application Ref. No: 23/01062/APP**

**Change the use of open land to private garden at 2 Duke Street Portgordon Buckie  
Moray for Mrs Audrey Murray**

I have the following comments to make on the application:-

- |   | <b>Please</b>                        |
|---|--------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <b>x</b><br><input type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <br>x                                |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <br><br>                             |
| (d) Further information is required in order to consider the application as set out below                                 | <br><input type="checkbox"/>         |

**Reason(s) for objection**

**Condition(s)**

**Further comment(s) to be passed to applicant**

**Further information required to consider the application**

**Contact: Ian M Douglas**

**email address:ian.douglas@moray.gov.uk**

**Date06/07/2023.....**

**.....**

**Phone**

**7049.....**

**No**



## Consultation Request Notification – Development Plans

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	10th July 2023
<b>Planning Authority Reference</b>	23/01062/APP
<b>Nature of Proposal (Description)</b>	Change the use of open land to private garden at
<b>Site</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133029785
<b>Proposal Location Easting</b>	339629
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<b>Area of application site (M<sup>2</sup>)</b>	162
<b>Additional Comments</b>	
<b>Development Hierarchy Level</b>	LOCAL
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=RWUJE1BGHFE00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=RWUJE1BGHFE00</a>
<b>Previous Application</b>	22/00905/APP 23/00695/APP
<b>Date of Consultation</b>	26th June 2023
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mrs Audrey Murray
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	2 Duke Street Portgordon Buckie Moray AB56 5RH
<b>Agent Name</b>	
<b>Agent Organisation Name</b>	
<b>Agent Address</b>	
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Iain T Drummond
<b>Case Officer Phone number</b>	01343 563607
<b>Case Officer email address</b>	iain.drummond@moray.gov.uk
<b>PA Response To</b>	consultation.planning@moray.gov.uk

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comment to make.

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Please respond using the attached form:-

**PLEASE COMPLETE AND RETURN WITHIN 48 HOURS**  
to [consultation.planning@moray.gov.uk](mailto:consultation.planning@moray.gov.uk)

## **MORAY COUNCIL PLANNING CONSULTATION RESPONSE**

**From: Development Plans**

**Planning Application Ref. No: 23/01062/APP**

**Change the use of open land to private garden at 2 Duke Street Portgordon Buckie  
Moray for Mrs Audrey Murray**

**Ward: 04\_17 Fochabers Lhanbryde**

### **DETERMINATION - DEPARTURE FROM DEVELOPMENT PLAN**

*(For Structure/Local Plan Comment)*

		<b>Page No</b>	<b>Policy No(s)</b>	<b>Yes</b>	<b>No</b>
<b>1</b>	<b>Departure from Moray Local Development Plan 2020</b>		Policy EP5 Open Space  Policy EP7 Forestry, Woodland and Trees	X  X	
<b>2</b>	<b>NPF4</b>		Policy 20 Blue and Green Infrastructure	X	
<b>3</b>	<b>Further Discussion Required</b>				

**REASONING FOR THIS DECISION:**

## **POLICY COMMENTS**

### **Moray Local Development Plan 2020**

#### Policy EP5 Open Space and ENV5

The site forms part of the ENV5 Green Corridor at Portgordon. Policy EP5 Open Space states that development that would result in a change of use of an ENV designation to anything other than an open space use will be refused. The proposal to change the open space to private garden ground is therefore not supported by policy. The site is part of the ENV5 Green Corridor that forms part of the old railway/cycle path corridor. The area contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the site makes up a small part of the green corridor piecemeal erosion of this can incrementally negatively impact on the quality and character of the ENV and the role it plays in the setting of Portgordon and wider green networks.

The principle of the proposal is not supported by policy EP5.

#### Policy EP7 Forestry, Woodland and Trees

Policy EP7 Forestry, Woodland and Trees states that where trees exist on or bordering a site a tree survey, tree protection plan and a mitigation plan must be provided with the planning application if the trees or trees bordering the site (or their roots) have the potential to be impacted by construction activity. Whilst it is not proposed to remove trees it appears that the re-routed footway and fencing could impact on trees and their roots. The applicant has submitted a Tree Survey Report completed by a Member of the Arboricultural Association. The survey has been carried out in accordance with BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations'. This confirms the condition and health of two trees adjacent to 2 Duke Street and includes a plan showing the root protection area. The Tree Survey states that tree protection barriers should be installed and the proposed garden fence should avoid using cement with post driven into the ground to avoid excavation within the root protection area. However, the tree report does not appear to have been updated to show the revised path route which now goes between the two trees. This would suggest the root protection area of both trees could be impacted rather than the one referred to in the report. Whilst additional information has been submitted this is not an Arboricultural Method Statement setting out how construction will minimise impacts on tree roots and does not provide sufficient information to confirm the trees would be safeguarded from impacts. Further information is required to confirm compliance with policy EP7.

### **National Planning Framework 4 (NPF4)**

#### Policy 20 Blue and Green Infrastructure

Policy 20 states that development proposals that result in fragmentation or net loss of existing blue and green infrastructure will only be supported where it can be demonstrated that the proposal would not result in or exacerbate a deficit in blue or green infrastructure provision, and the overall integrity of the network will be maintained. The proposal represents a net loss of green infrastructure. The site is part of the ENV5 Green Corridor within the LDP that forms part of the old railway/cycle path corridor. The proposal site helps connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the proposal site makes up a small part of the green corridor piecemeal erosion of this can incrementally negatively impact on the quality and character of the ENV and the role it plays in wider green networks.

In conclusion the proposal is a departure from policy EP5 Open Space as it proposes to change an ENV to private garden ground and further information is required in respect of an updated tree survey and a method statement for the construction of the footpath to demonstrate compliance with EP7 Forestry, Woodland and Trees.

**Contact:** Rowena MacDougall

**Date**.....29/09/23.....

**email address:**Rowena\_macdougall@moray.gov.uk

**Phone No** .....

**Consultee: Development Plans**

<b>Return response to</b>	<b>consultation.planning@moray.gov.uk</b>
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## **REPORT OF HANDLING**

<b>Ref No:</b>	23/01062/APP	<b>Officer:</b>	Fiona Olsen
<b>Proposal Description/ Address</b>	Change the use of open land to private garden at 2 Duke Street Portgordon Buckie Moray		
<b>Date:</b>	03.11.2023	<b>Typist Initials:</b>	LMC

### **RECOMMENDATION**

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

### **CONSULTATIONS**

<b>Consultee</b>	<b>Date Returned</b>	<b>Summary of Response</b>
Transportation Manager	30/06/23	No Objections subject to conditions and informatives
Estates, Central Services	26/06/23	No Objections
Strategic Planning And Development	02/10/23	Proposal is a departure from policy EP5 Open Space as it proposes to change the use of an area designated as ENV to private garden ground. An updated tree survey and Arboricultural Method Statement are also required to be submitted to demonstrate compliance with EP7 Forestry, Woodland and Trees.
Aberdeenshire Council Archaeology Service	04/07/23	No Objections
Moray Access Manager	06/07/23	No Objections

### **DEVELOPMENT PLAN POLICY**

<b>Policies</b>	<b>Dep</b>	<b>Any Comments (or refer to Observations below)</b>
NPF1 - Tackling the Climate		
NPF2 - Climate mitigation and adaptation		
NPF3 - Biodiversity		
NPF4 - Natural Places		
NPF5 - Soils		
NPF6 - Forestry, woodland and trees		

NPF7 - Historic assets and places		
NPF13 - Sustainable transport		
NPF14 - Design, quality and place		
NPF16 - Quality homes		
NPF20 - Blue and green infrastructure	Y	See below
NPF22 - Flood risk		
PP1 Placemaking		
PP2 Sustainable Economic Growth		
PP3 Infrastructure and Services		
DP1 Development Principles	Y	See below
EP2 Biodiversity		
EP5 Open Space	Y	See below
EP7 Forestry Woodland and Trees	Y	See below
EP8 Historic Environment		
EP14 Pollution Contamination Hazards		

## 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 adopted National Planning Framework 4 (NPF4) and Morar Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

The main planning issues are considered below:

### Proposal

The application seeks to change the use of an area of amenity ground to domestic garden ground and to erect a 1.2m fence to enclose the site.

### Site

The site is located immediately adjacent to 2 Duke Street, Portgordon and is currently an area of open amenity ground with two trees present.

The area of amenity ground is currently designated as Open Space under ENV5 within the MLDP2020 and forms part of the old railway/cycle path corridor at Portgordon.

An area of archaeological interest also lies over the site relating to the historical settlement of Portgordon.

**Policy Assessment (Moray Local Development Plan 2020, National Planning Framework 4) Siting (DP1, EP5, NPF4 Policies 14, 20)**

Policy DP1 states that development proposals will be supported if they conform the relevant Local Development Plan Policies, proposals and additional guidance and meet the criteria set out in DP1.

NPF4 Policy 14 requires that development proposals be designed to improve the quality of an area whether in urban or rural locations and regardless of scale. It also states that development proposals will be supported where they are consistent with the six qualities of successful places; Healthy, Pleasant, Connected, Distinctive, Sustainable and Adaptable. Finally, NPF Policy 14 states that proposals which are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places will not be supported.

Policy EP5 states that development that would result in a change of use of an ENV designation to anything other than an open space use will be refused.

NPF4 Policy 20 states that development proposals that result in fragmentation or net loss of existing blue and green infrastructure will only be supported where it can be demonstrated that the proposal would not result in or exacerbate a deficit in blue or green infrastructure provision, and the overall integrity of the network will be maintained.

In this case, the application seeks to change the use of an area of amenity ground identified as open space under ENV5 (within the MLDP2020) to domestic garden ground which is not supported by policies EP5 and NPF4 Policy 20. The site is part of the ENV5 Green Corridor that forms part of the old railway/cycle path corridor. The area contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the site makes up a small part of the green corridor, piecemeal erosion can negatively impact on the quality and character of the ENV and the role it plays in the setting of Portgordon and wider green networks. Therefore the application will be refused as it does not comply with policies EP5 and NPF4 Policy 20.

The applicant has submitted a supporting statement which refers to the Moray Food Growing Strategy and states that the purchase of the land would allow the applicant to grow fruit and vegetables, compost garden and household waste and use the garden for recreational purposes for family and friends. It is also outlined that the area of garden ground would allow the applicants the opportunity to promote biodiversity within the site. Whilst these overall aims are supported, this would not override the aforementioned objections with regard to the change of use of the area of ground from amenity ground to private garden ground which would fragment the existing green corridor within Portgordon whilst also resulting in the loss of open space designated under ENV5 which would fail to comply with MLDP2020 policies DP1, EP5 and NPF4 Policy 20.

**Road Safety (DP1, NPF4 Policy 13)**

The site is proposed to be enclosed by an approx. 1.2m high close boarded wooden fence on all three sides (including a gate in the north-west corner of the site). The fence would enclose an area identified as open space under ENV5 and therefore is not permitted under policies EP5 and MLDP2020 Policy 20. Moray Council Transportation were consulted on the application and raised no objections, subject to compliance with a series of conditions. These required that prior to the erection of the fence, a new public footpath be constructed and that any new boundaries fronting Duke Street be set back a minimum of 2.0m. Finally the conditions require that the proposed gate be contained within the site and not encroach on the public verge. Should the application be permitted, these would be matters controlled by condition in order to comply with the Transportation requirements of policies DP1 and NPF Policy 13.

### **Trees (EP7, NPF4 Policy 6)**

Policy EP7 requires that proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these. Where trees exist on or bordering a development site, a tree survey, tree protection plan and mitigation plan must be provided with the planning application if the trees or trees bordering the site have the potential to be affected by development and construction activity.

NPF4 Policy 6 refers to tree removal and states that development proposals will not be supported where they will result in any loss of ancient woodland, veteran trees or have an adverse impact on their ecological condition or any adverse impact on native woodlands and individual trees of high biodiversity value.

No trees are proposed to be removed from the site, however it is proposed to re-route a public footpath between the two trees and there is the potential that the formation of the path and fencing to impact on the tree roots. A Tree Survey Report and Schedule has been submitted which confirms the condition and health of two trees adjacent to 2 Duke Street (one category B Sycamore and one category C Rowan tree). The Tree Survey states that tree protection barriers should be installed and the proposed garden fence should avoid using cement with post driven into the ground to avoid excavation within the root protection areas. However, the tree survey report has not been updated to show the revised path route which now goes between the two trees. As a result, the impact of the construction of the path on the root protection area of both trees area cannot be fully assessed and therefore the proposals would fail to comply with MLDP2020 Policy EP7. Additional information has been submitted outlining details of the proposed path (Whin Dust Path - semi-tray excavation) however this does not set out how construction will minimise impacts on tree roots. It also does not provide sufficient information to confirm the trees would be safeguarded from impacts and this information is required to be submitted in the form of a formal Arboricultural Method Statement which is also required under Policy EP7.

### **Conclusion**

The proposals would result in the loss of an area of identified as Open space under ENV5 within the Moray Local Development Plan 2020 which is not permitted under MLDP2020 Policy EP5. The ENV5 Green Corridor forms part of the old railway/cycle path corridor which contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre and as such the application would fail to comply with MLDP2020 Policies DP1, EP5 and NPF4 Policy 20.

The Tree Survey Report has not been updated to show the location of the rerouted footpath which would now go between the trees and an Arboricultural Method Statement has not been submitted which would set out how construction will minimise impacts on tree roots. As a result, MLDP2020 Policy EP7 has not been complied with as additional information is required to confirm that the trees would be safeguarded from the impact of the construction of the path.

As such the application will be refused as it fails to comply with policies DP1, EP5, EP7 and NPF4 Policy 20.

### **OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT**

None

<b>HISTORY</b>			
<b>Reference No.</b>	<b>Description</b>		
22/00905/APP	Change of use from open space to private garden ground erect a wall/fence and relocate the existing pathway at 2 Duke Street Portgordon Buckie Moray AB56 5RH		
	<b>Decision</b>	Withdrawn	<b>Date Of Decision</b>

23/00695/APP	Change of use of Council land to garden land and relocated public path at 2 Duke Street Portgordon Buckie Moray AB56 5RH			
	<b>Decision</b>	Withdrawn	<b>Date Of Decision</b>	08/06/23

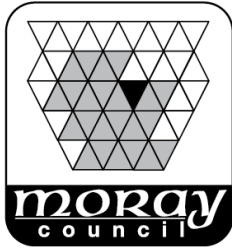
<b>ADVERT</b>			
<b>Advert Fee paid?</b>	N/A		
<b>Local Newspaper</b>	<b>Reason for Advert</b>	<b>Date of expiry</b>	

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

<b>DOCUMENTS, ASSESSMENTS etc. *</b> <i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>		
Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name:	Planning Statement	
Main Issues:	Outlines history of site and policy background to the proposal.	
Document Name:	Tree Survey Report	
Main Issues:	Outlines details of a tree survey undertaken of the two trees on the site	
Document Name:	Tree Survey Schedule	
Main Issues:	Gives details of each tree surveyed.	
Document Name:	Whin Dust Path (Semi-Tray Excavation) Standard Detail	
Main Issues:	Gives details of 'whin dust' path proposed to be constructed.	

<b>S.75 AGREEMENT</b>		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

<b>DIRECTION(S) MADE BY SCOTTISH MINISTERS</b> (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)			



**MORAY COUNCIL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,  
as amended**

**REFUSAL OF PLANNING PERMISSION**

**[Fochabers Lhanbryde]  
Application for Planning Permission**

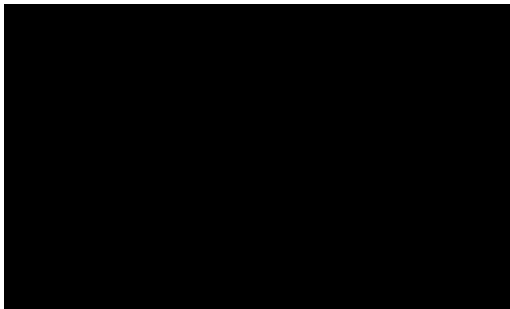
TO Mrs Audrey Murray  
2 Duke Street  
Portgordon  
Buckie  
Moray  
AB56 5RH

With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

**Change the use of open land to private garden at 2 Duke Street Portgordon  
Buckie Moray**

and for the reason(s) set out in the attached schedule.

Date of Notice: **7 November 2023**



**HEAD OF ECONOMIC GROWTH AND DEVELOPMENT**

Economy, Environment and Finance  
Moray Council  
Council Office  
High Street  
ELGIN  
Moray  
IV30 1BX

**IMPORTANT**  
**YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW**

**SCHEDULE OF REASON(S) FOR REFUSAL**

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The proposed change of use of an area of Open Space to domestic garden ground is contrary to the Moray Local Development Plan (2020) and National Planning Framework 4 for the following reasons:

1. The proposals would result in the loss of an area of identified as Open Space under ENV5 within the Moray Local Development Plan 2020 which would fail to comply with MLDP2020 Policies DP1 and EP5.
2. The ENV5 Green Corridor forms part of the old railway/cycle path corridor which contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the site makes up a small part of the green corridor, piecemeal erosion can negatively impact on the quality and character of the ENV and the role it plays in the setting of Portgordon and wider green networks and therefore the proposals would also fail to comply with NPF4 Policy 20 as the overall integrity of the green network would be fragmented.
3. The Tree Survey Report has not been updated to show the location of the rerouted footpath which would now go between the trees and an Arboricultural Method Statement has not been submitted which would set out how construction will minimise impacts on tree roots. As a result, MLDP2020 Policy EP7 has not been complied with as additional information is required to confirm that the trees would be safeguarded from the impact of the construction of the path.

**LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

The following plans and drawings form part of the decision:-

<b>Reference</b>	<b>Version</b>	<b>Title</b>
		Location plan
		Elevations
		Site plan



## **NOTICE OF APPEAL**

### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.





## **APPENDIX 2**

# **NOTICE OF REVIEW, GROUNDS FOR REVIEW & SUPPORTING DOCUMENTS**



# NOTICE OF REVIEW

Under Section 43A(8) Of the Town and County Planning (SCOTLAND) ACT 1997 (As amended) In Respect of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND) Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

**IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.**

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA <https://www.eplanning.scot>

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mrs	Ref No.	
Forename	Audrey	Forename	
Surname	Murray	Surname	
Company Name		Company Name	
Building No./Name	2	Building No./Name	
Address Line 1	Duke Street	Address Line 1	
Address Line 2		Address Line 2	
Town/City	Portgordon	Town/City	
Postcode	AB56 5RH	Postcode	
Telephone		Telephone	
Mobile		Mobile	
Fax		Fax	
Email		Email	
3. Application Details			
Planning authority	The Moray Council		
Planning authority's application reference number	23/01062/APP		
Site address	2 Duke Street Portgordon Buckie AB56 5RH		
Description of proposed development	Change the use of open land to private garden at 2 Duke Street Portgordon, Buckie, Moray.		

Date of application

26/06/2023

Date of decision (if any)

07/11/2023

**Note.** This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

**4. Nature of Application**

Application for planning permission (including householder application)

Application for planning permission in principle

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

Application for approval of matters specified in conditions

**5. Reasons for seeking review**

Refusal of application by appointed officer

Failure by appointed officer to determine the application within the period allowed for determination of the application

Conditions imposed on consent by appointed officer

**6. Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions

One or more hearing sessions

Site inspection

Assessment of review documents only, with no further procedure

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

Form does not allow to click two boxes but we would also be requesting a site inspection. The further written submissions would be to consider in more detail our supporting information submitted with the original planning application and the subsequent email exchanges with the planning officer regarding the tree survey report and the arboricultural method statement.

**7. Site inspection**

In the event that the Local Review Body decides to inspect the review site, in your opinion:

Can the site be viewed entirely from public land?

Is it possible for the site to be accessed safely, and without barriers to entry?

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

### 8. Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

We would like a review of the reasons for the refusal based on the information we submitted with our planning proposal.

The land was historically not part of green open space, there had been a building on it. The path would continue to connect the upper part of the village with the centre but there is no pavement on this side of the road and the cycle path does not extend into the village square.

The growing of food and flowers would greatly enhance the biodiversity of the area as well as increase our ability to feed our family and use our household food waste to sustain the area through composting and stop the need for any food and garden waste collection. There is currently no allotment provision in our area.

The area does not provide any amenity to the hall and hall activities do not take place on this land.

Also regarding the trees on site, we followed the Moray Council's request to have a tree survey completed and we are willing to follow the recommendations, as per the arborist, for the re-routing of the path to prevent any damage to tree roots. It was agreed with the planning officer that an email detailing the path specification and method of construction would suffice, and this is attached with our information.

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes  No

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

### 9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

Applicants statement supporting information  
Email evidence from Arborist to Planning Officer  
Whin dust path standard detail  
Refused Loction Plan  
Refused Site Plan  
Refused Elevation Plan

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

### 10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form

Statement of your reasons for requesting a review

All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

### DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:

Name:

Audrey Murray

Date:

03/01/2024

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.



## Applicants Statement to Support the Planning Application for the change of use of the ground adjacent to 2 Duke Street Portgordon

We would be grateful if the history of the area of ground at the side of our house could be considered as part of our planning application as it has not always been a green corridor area. The land is currently owned by The Moray Council whose Estates Department have agreed to the sale, confirmed in May 2022.

Prior to 1977, the area had long been used as a private yard for industrial/commercial purposes (as noted from photographic records), leased by the Crown Estate Commissioners to a tenant. There had also been a building on the site.

In 1978 and then in 1979 the railway line to the west and then the east of the site was purchased by Moray District Council for the specific purpose of providing amenity areas such as a play park, bowling green and country type walks.

The land at Duke Street immediately west of No 2 was purchased by Grampian Regional Council Roads Department from The Crown Estate Commissioners in January 1977 for the specific purposes of constructing a road improvement, linked to the removal of the existing railway bridge.

Following our approach to Moray Council's Estates team in 2021, there was subsequent consultation and site meetings with Moray Council Roads Service who confirmed that on the basis that the existing substandard footway was rerouted at our expense and that visibility was maintained at the junction, Roads were prepared to declare the area was surplus to their requirements.

Following the land sale consultation phase, in their letter dated 25-05-2022, the Estates Team agreed to the sale of the land subject to planning permission.

It is appreciated that in the 2020 Local Plan, both the railway line and the grassed area west of 2 Duke Street are categorised as an 'ENV5 Green Corridor' area. However, while it is recognised that land use can change over time, the land purchased by the Roads Department in 1977 was not purchased specifically for amenity value. Indeed, during 2019 and 2020 due to financial constraints, Moray Council took the decision to stop cutting the grass in this area and, had it not been for our intervention in maintaining part of the area ourselves over this 2-year period, the area would have been left to grow wild, with no apparent alternative maintenance plan in place. This indicates to us that the area was not considered to be of high public amenity value and undermines the case for protection under the local plan.

The Moray Council's "Moray Food Growing Strategy 2020" guidance document, developed to support the Moray Local Development Plan 2020, aims to ensure that there are more opportunities for people who would like to grow their own food. They recommend a variety of food growing spaces and many communal open spaces have been identified within this document as potential food growing sites.

There is a community garden in Portgordon at which we volunteer, but there is no allotment provision and at the moment there does not seem to be a plan to provide this in our area. The purchase of the land next to our house would allow us to grow the fruit and vegetables to sustain our family and also to have the space to compost our garden waste and some of the household waste as well as the positive impact the garden would have on our mental health and that of our visiting friends and family.

Audrey and Derek Murray, 2 Duke Street, Portgordon, AB56 5RH

## Applicants Statement to Support the Planning Application for the change of use of the ground adjacent to 2 Duke Street Portgordon

We feel passionately about increasing the biodiversity of the area and this space would give us the opportunity to increase the area for birdlife, insects, bees, and amphibians which are all present in our existing small garden. We envisage using a variety of plants and flowers as well as creating small habitat areas for these creatures. The Moray Food Growing Strategy states as one of its actions to prepare and demonstrate how food growing can be integrated into green and blue networks to support biodiversity enhancement as well as to deliver allotment sites and food growing areas.

We noted the previous concerns of the Planning Department about the re-routed path impacting on the tree roots and have since commissioned an Arborist to complete a tree survey and report. The option of rerouting the path between the trees using a whin dust construction would support the requirement to protect the trees.

There were no objections to the previous planning application, (22/00905/APP), from neighbours, or the Hall Committee and we do have local support to see the ground used to grow food and increase the biodiversity of this area. We have been given compliments for 26 years now from villagers appreciating the floral display we have maintained at the side of our house and have shown our commitment to maintaining this area.

**2. Duke Street, Portgordon, Moray, AB56 5RH - Change of Use from Open Space to Private Garden**  
**Location Plan**



Location Plan shows area bounded by: 339551.33, 864126.88 339692.75, 864268.3 (at a scale of 1:1250), OSGridRef: NJ39626419. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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**Town & Country Planning  
(Scotland) Act, 1997  
as amended**

***REFUSED***

**07 November 2023**

**Development Management  
Environmental Services  
The Moray Council**

# AMENDED PLANS

Town & Country Planning  
(Scotland) Act, 1997  
as amended

**REFUSED**

07 November 2023

Development Management  
Environmental Services  
The Moray Council



2, Duke Street, Portgordon, Moray, AB56 5RH - Change of Use from Open Space to Private Garden  
- Site Plan



Site Plan (also called a Block Plan) shows area bounded by 339604.04, 864175.59 339640.04, 864216.69 (at a scale of 1:200), OSGridRef: NJ38626419. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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**Notes/Key:**

1. — Boundary of land owned by applicant.
2. — Boundary of land subject to change of use (from open space to private garden) and new unadopted footway.
3. — Close boarded wooden fence around new boundary, 1.2m high with 1m wide pedestrian gate in NW corner (Fence on southern boundary to be erected on Council land as agreed with Estates (ref letter dated 25/02/22))  
Fence posts within root zone to be driven avoiding need for excavation as per tree report dated March 2023.
4. Existing trees (2no) to be retained as per tree report.
- 5.
6. New footway specification to be whin dust (semi tray excavation) as agreed with Council Planning and Transportation (Roads Development) teams (ref discussions 07/06/23) with construction to be as per drawing and specification no SD/WDP/02. 1.2m wide as per existing unadopted footway x approx. 19.0m long. 150mm thick type 1 granular sub-base and 25mm thick quarry whinstone surface course.

Town & Country Planning  
(Scotland) Act, 1997  
as amended

**REFUSED**

07 November 2023

Development Management  
Environmental Services  
The Moray Council

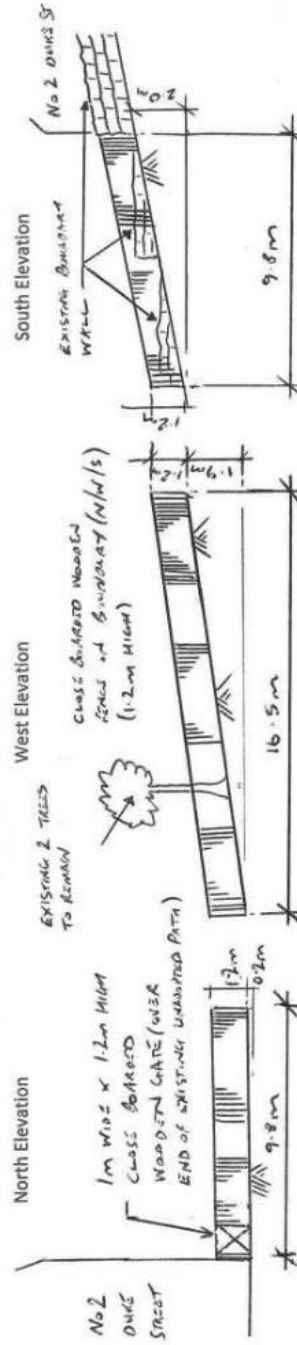
Drawing Title:

2 Duke Street, Portgordon, AB56 5RH  
Planning Application  
Change of Use to Private Garden

Applicant:

Mr & Mrs D. Murray  
2 Duke Street  
Portgordon  
Banffshire  
AB56 5RH

Drawn: DM Date: 20/04/23 Scale: 1:200  
Drawing No. 3 – Proposed Boundary Fence  
Elevations (North / West / South) 1:200



## Email Evidence from Arborist

**Fiona Olsen** <Fiona.Olsen@moray.gov.uk>

Sep 6, 2023,  
10:45 AM

to me

Hi Audrey,

I have spoken with a senior colleague and with Rowena MacDougall in Development Plans who is providing comments in relating to planning policy for the application.

We do require something from the Tree Specialist to confirm that the whin dust path will not affect the tree roots. An email should be sufficient, can you obtain this? I know that the path specification was suggested by Transportation however we would need written confirmation from a Tree Specialist that the roots will not be affected in order to meet policy requirements for Policy EP7 and therefore this not be an additional reason for refusal.

Can you let me know if you are able to provide this?

Thanks

Fiona

**Audrey Murray** [REDACTED]

Mon, Sep 25, 2023,  
3:28 PM

to Fiona

Hi Fiona,

I have the information from Struan Dalgleish the Arborist which is attached below.

Many thanks,

Audrey and Derek

----- Forwarded message -----

From: **Struan Dalgleish** <[REDACTED]>

Date: Fri, Sep 22, 2023 at 10:41 AM

Subject: RE: Planning Application 23/01062/APP: Garden at 2 Duke Street, Portgordon

To: Audrey Murray <[REDACTED]>

Dear Mr and Mrs Murray,

## **Email Evidence from Arborist**

With reference to the above planning application and our subsequent discussions relating to the re-location of the proposed footpath, I am pleased to provide additional information regarding protection of the trees.

Two trees were recorded and root protection areas (RPA's) identified by the March 2023 Tree Survey. The revised path layout requires it to be constructed between trees and through their RPA's.

Where significant incursion into RPA's is unavoidable the use of a geo-grid, such as Geosynthetics Golpla can be used to reduce the impact on tree roots. The Geo-grid minimizes the requirement for excavation and compaction of soils which contain tree roots, protecting the health of the trees.

It is noted that the path will be suitable for pedestrian use only.

Following the careful removal of turf using hand tools and avoiding damage to tree roots, Golpla Geo-grid can be laid directly onto the existing level without the need for soil compaction.

The link below provides details of the product, however it is noted that underlying soils with RPA's should not be compacted. <https://www.geosyn.co.uk/downloads?pld=310>

All construction within rooting areas should be undertaken by hand and heavy machinery, which may compact soils should not enter RPA's.

Kind regards,

Struan

Struan Dalgleish MICFor, CEnv  
Arboricultural Consultant  
0777 367 4623

**Struan Dalgleish MICFor, CEnv  
Arboricultural Consultant**

**0777 367 4623**

**Struan Dalgleish Arboriculture Ltd**

--

Kind Regards,  
Audrey.