

## ABERDEENSHIRE COUNCIL

### LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 28 JUNE, 2019

**Present:** Councillors F Hood (Chair), R Cassie, P Gibb (substituting for Cllr A Ross), J Hutchison, P Johnston and I Sutherland.

**Apologies:** Councillor A Ross.

**Officers:** Planning Advisers to the Local Review Body, (Senior Planner, James Wheeler for LRB 450), (Senior Planner, Jane Weir for LRB 456) and (Senior Planner, Bruce Strachan for LRB 457 and LRB 458) Legal Adviser to the Local Review Body, (Senior Solicitor, Peter Robertson) and Committee Officer, (Frances Brown).

#### 1. DECLARATION OF MEMBERS' INTERESTS.

In respect of declaration of members' interests, as required by the Code of Conduct for members, no declarations of members' interests were intimated.

#### 2. PUBLIC SECTOR EQUALITY DUTY.

In making decisions on the following items of business, the Committee **agreed**, in terms of Section 149 of the Equality Act, 2010:-

- (1) To have due regard to the need to:-
  - (a) eliminate discrimination, harassment and victimisation;
  - (b) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
  - (c) foster good relations between those who share a protected characteristic and persons who do not share it
- (2) Where an Equality Impact Assessment was provided, to consider its contents and take those into account when reaching their decision.

#### OPENING REMARKS BY THE CHAIR.

The Chair, having submitted his apologies to the Local Review Body meeting of 26 April 2019 when Agenda Item 6, (LRB 450) was previously considered, withdraw from proceedings when that review was being determined.

Councillor Johnston, in his capacity as Chair for that item, would again Chair the meeting for Agenda Item 6, LRB 450.

#### 3. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 23 MAY, 2019.

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 23 May 2019, and the minute was duly signed in public.

#### **4. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 31 MAY, 2019.**

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 31 May 2019, and the minute was duly signed in public.

#### **5. SPREADSHEET HIGHLIGHTING RELEVANT POLICIES FOR EACH REVIEW.**

The Local Review Body had before them and **noted** a spreadsheet which listed the policies which would be referred to in consideration of each of the reviews presented before them, as contained within the Aberdeenshire Local Development Plan (2017).

#### **RECONVENED REVIEWS**

#### **6. LRB 450 – NOTICE OF REVIEW REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 1 DWELLINGHOUSE (RENEWAL OF PLANNING PERMISSION REFERENCE APP/2014/2988) AT LAND AT MAINS OF PITTENDRUM, ST MAGNUS ROAD, SANDHAVEN, FRASERBURGH, AB43 7EN – REFERENCE: APP/2018/2071.**

Local Review Body: Councillors P Johnston (Chair), J Hutchison and I Sutherland.

Reference was made to the Minute of the Local Review Body meeting of 26 April, 2019 (Item 10), where the Local Review Body agreed to defer consideration of the Notice of Review, to allow them to follow further procedure, by way of seeking additional information, namely:-

- (i) The decision notice stated that the Refusal was for Full Planning Permission instead of Planning Permission in Principle; as the Local Review Body were considering the review 'de novo' should they be considering it as Planning Permission in Principle (from the Planning Service);
- (ii) When considering Policy R1: Special Rural Areas – what is the Planning Service policy position for the proposed development which would be sited within the Coastal Zone (from the Planning Service);
- (iii) When considering Policy HE1: Protecting Historic Buildings, Sites and Monuments – what is the Planning Service policy position on the potential impact on the setting of a nearby Grade A listed building Pittendrum House (from the Planning Service); and
- (iv) Consult with Historic Environment Scotland to ascertain what impact the proposed development may have on the setting of Pittendrum House, a category A listed building which was within 100 meters of the application site (from Historic Environment Scotland).

The Local Review Body noted that all of the information requested from the planning service and Historic Environment Scotland, had been circulated as pages 23-29 of the agenda pack.

The Local Review Body then resumed consideration of the Notice of Review, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for Erection of 1 Dwellinghouse (Renewal of Planning Permission Reference: APP/2014/2988) at Land at Mains of Pittendrum, St Magnus Road, Sandhaven, Fraserburgh, AB43 7EN – Reference: APP/2018/2071.

The Planning Adviser introduced the Notice of Review and provided the Local Review Body with an overview of the application as presented at the initial meeting of 26 April, 2019 and a recap of the Appointed Officer's reasons for refusal, namely:-

- (1) The proposed development is contrary to Policy R2: Housing and Employment Development Elsewhere in the Countryside, as contained in the Aberdeenshire Local Development Plan 2017, as the proposed dwellinghouse fails to meet the criteria set out in that policy, in that:
  - (a) It is not of a type that would be permissible in the greenbelt;
  - (b) It does not contribute to the growth of a settlement identified in Appendix 4;
  - (c) It is not associated with the retirement succession of a viable farm holding;
  - (d) It is not for the refurbishment or replacement of an existing or disused building, or remediation of redundant brownfield land opportunities;
  - (e) It is not an employment development proposal; and
  - (f) It is not an appropriate additional to a cluster or group of at least 5 houses.
- (2) Material consideration indicates that the permission should be refused, as there is a material change in planning policy relevant to this particular proposal.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R2: Housing and Employment Development Elsewhere in the Countryside; Policy P1: Layout, Siting and Design; Policy C1: Using Resources in Buildings; Policy RD1: Providing Suitable Services and Policy RD2: Developers' Obligations.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members' to consider the review without further procedure.

In response to a questions raised by the Local Review Body, the Planning Adviser confirmed:

- (1) The application was for Planning Permission in Principle and the title of the final Review Decision Notice should reflect the previous procedural error.
- (2) While the application was a renewal of Planning Permission in Principle, there had been a material change in policy since the original decision had been made and as such it would no longer be considered to contribute to the organic growth of a settlement within the identified settlement plan and would be in direct conflict policy R1 as the new dwellinghouse would not require a coastal location.
- (3) A material consideration, when determining the application, would be the potential impact on the settlement of a listed building.

The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was the material change in planning policy, since the original permission had been granted and the potential impact on the settlement of a listed building.

During discussion, the Local Review Body noted that the additional information sought from the Planning Service had been extremely helpful as that information had allowed members to gain a real understanding of the key issues which should be taken into consideration when determining the Notice of Review.

The Local Review Body were unanimous in their view that they were considering the review 'de novo' and as such they could not put much weight on the past history of the application site and they would focus their attention on all the information as presented before them.

The Local Review Body took cognisance of the fact that there had been a material change to the policy position since 2015 when the original application for Planning Permission in Principle had been approved and the renewal of an application should be determined by the application of the policies contained within the Aberdeenshire Local Development Plan 2012.

Reference was made to the Appointed Officer's reasons for refusal and the Local Review Body agreed that Policy R2 was not the correct policy as that policy would apply to application sites out with the coastal zone, however, the proposal before them was within the coastal zone. As such the Local Review Body referred to Policy R1: Special Rural Areas and were minded that the proposal would not in their view comply with the policy criteria, as it would not contribute to the organic growth of a settlement as identified in Appendix 4; and the dwellinghouse would not require a coastal location.

When considering Policy HE1: Protecting Historic Buildings, Sites and Monuments, the Local Review Body acknowledged, and put significant weight on the response submitted by Historic Environment Scotland which had commented that they had concerns about the principle of development in that location and concerns over whether, if approved, that it may set a precedent for further housing within the field, the cumulative impact of which would further impact adversely on the open landscape setting of a listed building.

After due consideration, the Local Review Body **agreed** to DISMISS the Notice of Review and Refuse Planning Permission in Principle following the material change to the policy position since 2015 as the proposed development would fail to comply within Policy R1; Special Rural Areas and Policy HE1: Protecting Historic Buildings, Sites and Monuments.

### **NEW REVIEWS**

#### **7. LRB 456 – NOTICE OF REVIEW AGAINST REFUSAL FULL PLANNING PERMISSION FOR HOUSING DEVELOPMENT COMPRISING CONVERSION OF RETAINED PORTIONS OF STEADING TO FORM 2 NO. DWELLINGHOUSES, ERECTION OF 2 NO. DWELLINGHOUSES AND UPGRADING ACCESS ROAD AT MILL OF ALLATHAN, UDNY, ELLON, ABERDEENSHIRE, AB41 7PR – REFERENCE: APP/2019/0142.**

Local Review Body: Councillors F Hood (Chair), R Cassie, I Davidson, P Gibb, J Hutchison and I Sutherland.

There had been submitted, a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for a Housing Development, Comprising Conversion of Retained Portions of Steading to Form 2 No. Dwellinghouses, Erection of 2 No. Dwellinghouses and Upgrading of Access Road at Mill of Allathan, Udney, Ellon, Aberdeenshire, AB41 7PR – Reference: APP/2019/0142.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicants had requested one or more hearing sessions, to consider the pre application response from the Planning Service and a site inspection to allow the Local Review Body to appreciate the setting, scale and quality of the site and the portions of the existing steading which would be retained. The Planning Adviser then provided the Local Review Body with the background to the applicant's case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser ended her presentation by reporting that no valid representations or had been received during the consultation period, prior to determination.

Further to consultations undertaken, it was reported that Developer Obligations had advised that a contribution would be required towards affordable housing and secondary education and an assessment report had been sent to, and agreed by the agent; Environmental Health had no objection to the proposal, however commented that the proposed development should be connected to the public water supply and that the locations of the heat pumps should be finalised and submitted to the Planning Service prior to the commencement of any building works; Roads Development had no objection, subject to planning conditions being attached to the consent which would relate to the gradient of the new access, vehicle parking, and formation of lay-by, visibility splays, refuse facilities and turning areas being implemented; Scottish Water had no objection to the proposal as there was sufficient capacity in the Turriff Water Treatment Works and Pitmedden Waste Water Treatment Works and Scottish Natural Heritage (under APP/2018/1581) had advised that a Licence would be required if the application was approved as it was the same proposal, with associated supporting documents (including a Bat Survey) and it was considered that the Licence was still applicable.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely:-

- (1) The development fails to comply with Policy R2: Housing and employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan 2017, in that it exceeds the "small scale development" of no more than 3 houses criteria which is set to promote sustainable development.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R2: Housing and Employment Elsewhere in the Countryside; Policy P1: Layout, Siting and Design; Policy E1: Natural Heritage; Policy E2: Landscape; Policy C1: Using Resources in Buildings; Policy RD1: Providing Suitable Services and Policy RD2: Developers' Obligations.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members' to consider the review without further procedure.

In response to questions raised, the Legal Adviser confirmed:-

- (1) That the economic position and the actual costs associated with the proposed development would not generally have any weight as a material consideration for the departure from the policy position.
- (2) That the emerging Local Development Plan, which may have greater flexibility for larger brownfield sites would have limited material weight at present, however, when the main issues report is published in a few years, it would have material weight when considering similar reviews.

In response to questions raised, the Planning Adviser confirmed:-

- (1) Plots 1, 2 and 4 had consent and Plot 3 would be an additional unit if approved by the Local Review Body.
- (2) None of the steadings were listed buildings, therefore could not be supported as enabling development for the redevelopment of a listed building.
- (3) The National Grid had not been consulted and a PADHI (Planning Advice for Developments near Hazardous Installations) was not available.

- (4) The pipeline goes from North to South as shown on the current land use map on Page 169 of the agenda papers. (270 meters in the outer zone).

The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

During discussion, opposing views were expressed.

Those members who were minded to uphold the Notice of Review were sympathetic to the applicant's position on the grounds that they considered that there needed to be some flexibility when considering the original layout of the farm buildings and there were material considerations which could warrant a departure from the policy position.

Those members were minded to dismiss the Notice of Review were minded that the policy position was very clear that a 'small scale development' should be no more than 3 houses, and the applicant had failed to demonstrate anything material within their Notice of Review which could warrant a departure from those policies.

Councillor Hutchison, seconded by Councillor Davidson, moved to uphold the Notice of Review and GRANT Full Planning Permission, on the grounds that material considerations would outweigh the policy position, namely: - the relationship to the surroundings; the size of the brownfield site; the preservation of an existing historic building; the design of the proposed development would retain a vernacular building and the re-use/transformation of a redundant farming complex.

Councillor Cassie, seconded by Councillor Gibb, moved as an amendment to DISMISS the Notice of Review and uphold the Appointed Officer's decision to Refuse Full Planning Permission as the proposal would not comply with Policy P2 as it would exceed the "small scale development" of no more than 3 housing units.

The members of the Local Review Body then voted:-

For the motion (3) Councillors Davidson, Hood and Hutchison.

For the amendment (3) Councillors Cassie, Gibb and Sutherland.

As there was an equality of votes, the Chair, used his casting vote, and voted for the motion.

The motion was duly carried and the Local Review Body **agreed** to UPHOLD the Notice of Review and GRANT Full Planning Permission subject to standard planning conditions being attached to planning consent which should include conditions to address those matters raised by the consultees during the consultation process.

**8. LRB 457 – NOTICE OF REVIEW AGAINST REFUSAL FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AND DETACHED GARAGE AT LAND AT REIVESLEY, OLDMELDRUM, ABERDEENSHIRE, AB51 0DN – REFERENCE: APP/2018/3083.**

Local Review Body: Councillors F Hood (Chair), R Cassie, I Davidson, P Gibb, J Hutchison and I Sutherland.

There had been submitted, a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the

Erection of a Dwellinghouse and Detached Garage, at Land at Reivesley, Oldmeldrum, Aberdeenshire, AB51 0DN – Reference: APP/2018/3083.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicants had requested a review of the documents as presented before them and no further procedure. The Planning Adviser then provided the Local Review Body with the background to the applicant's case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser ended his presentation by reporting that no valid representations or had been received during the consultation period, prior to determination.

Further to consultations undertaken, it was reported that Developer Obligations had confirmed that a contribution had been agreed towards an extension for Meldrum Academy to increase capacity; Roads Development had initially objected to the proposal as an amended drawing which showed visibility splays, bin store, lay by and gradient was required, however, following receipt of that information, the service no longer objects, subject to conditions and informatives being attached to any permission.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely:-

- (1) The principle of development on this site is not acceptable as the proposal does not comply with Policy R2: Housing and employment development elsewhere in the countryside as the structure is not considered redundant.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R2: Housing and Employment Development in the Countryside; Policy P1: Layout, Siting and Design; Policy C1: Using Resources in Buildings; Policy E2: Landscape; Policy RD1: Providing Suitable Services and Policy RD2: Developers' Obligations.

The Planning Adviser noted that consideration should also be given to Policy R1: Special Rural Areas, E1: Natural Heritage, E2: Landscape and C1: Using Resources in Building which had not been included in the Report of Handling.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members' to consider the review without further procedure.

In response to a question raised, the Planning Adviser confirmed that Policy R2 would not allow for the conversion of a building in a private garden as contained in the Aberdeenshire Local Development Plan 2012 glossary under brownfield land (page 647).

The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issue for the Notice of Review as presented before them was the principle of development and the likely impact of the development on the character and amenity of the surrounding area.

During discussion, the Local Review Body acknowledged the arguments put forward by the agent which had suggested that the proposal should be assessed under R1: Special rural areas which is supportive of the "sensitive restoration, conversion or extension of a vernacular building" and not R2: Housing and Employment Elsewhere in the Countryside which would generally restrict development proposals in the countryside out with Aberdeen greenbelt and

coastal zone to small scale developments, including development that would be appropriate in the greenbelt.

When referring to the Report of Handling and the decision Notice, it was noted that the Appointed Officer had assessed the application against R2 only, and having considered all of the information before them, the Local Review Body were minded that Policy R2 was the correct policy as the proposal would not in their view be the “sensitive restoration, conversion or extension to a vernacular building”.

The Local Review Body were unanimous in their view that reference to Policy R2 and specifically to the glossary under brownfield land of the Aberdeenshire Local Development Plan 2012 was very clear that the proposal would not constitute the remediation of redundant brownfield land and the conversion of a building on private garden ground could not be supported.

After due consideration, the Local Review Body **agreed** to DISMISS the Notice of Review, and to uphold the Appointed Officer’s decision to REFUSE Full Planning Permission for the reasons contained in the Decision Notice issue don 13 March 2019.

**9. LRB 458 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR DEMOLITION OF AGRICULTURAL BUILDINGS AND ERECTION OF DWELLINGHOUSE, OFFICE AND WAREHOUSE AT LAND ADJACENT TO LONGDRUM, WHITECAIRNS, ABERDEENSHIRE, AB23 8UP – REFERENCE: APP/2018/3073.**

Local Review Body: Councillors F Hood (Chair), R Cassie, I Davidson, P Gibb, J Hutchison and I Sutherland.

There had been submitted, a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer’s decision to Refuse Full Planning Permission for the Demolition of Agricultural Buildings and the Erection of a Dwellinghouse, Office and Warehouse at Land Adjacent to Longdrum, Whitecairns, Aberdeenshire, AB23 8UP – Reference: APP/2018/3073.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicants had requested a review of the documents as presented before them and no further procedure. The Planning Adviser then provided the Local Review Body with the background to the applicant’s case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser ended his presentation by reporting that no valid representations or had been received during the consultation period, prior to determination.

Further to consultations being undertaken, it was reported that Archaeology had no objection to the proposed development, however, had advised that planning conditions and informatives should be applied to any planning consent; Developer Obligations had confirmed that contributions had been agreed Primary Education, contributions towards increased capacity at Balmedie Primary School; Environmental Health has no objection to the proposal, having provided advice to the applicant in relation to air source heat pumps and noise levels during construction; Flood and Risk Coastal Protection had no objection to the proposal; Roads Development had no objection to the proposed development, subject to conditions; Scottish Environment Protection Agency had no objection to the proposed development, having referred the applicant to legislation including Flood Risk, Pollution Prevention and Surface Water Drainage and Scottish Water had no objection to the application as there was currently sufficient water capacity in the Invercarnie Water Treatment Works.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely:-

- (1) The proposal does not comply with Policy R2 (Housing and employment development elsewhere in the countryside), of the Aberdeenshire Local Development Plan 2017, in that the proposed office/warehouse is not deemed a small scale employment proposal and therefore fails to meet the criteria for Policy R2. It has not been established that there is no alternative existing or allocated business land available or that there is an operational need for the business to be sited there.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R2: Housing and Employment Development Elsewhere in the Countryside; Policy P1: Layout, Siting and Design; Policy C1: Using Resources in Buildings; Policy RD1: Providing Suitable Services; Policy RD2: Developers' Obligations and Policy E2: Landscape.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members' to consider the review without further procedure.

In response to questions raised, the Planning Adviser confirmed:-

- (1) The principle of the redevelopment of the site had not disputed by the Planning Service, as evidenced by the granting of the previous permissions for three dwellinghouses. The primary consideration would be whether the office/warehouse would be accepted as a 'small scale' development, with an employment site of under 0.5 hectares which would employ five or less employees.
- (2) It was not clear if the Appointed Officer had reached their decision taking into account the scale of the development based on the size of the site or the number of employees as there was no assessment in the Report of Handling, however, it could be assumed that it was based on the five desks shown in the office and the additional storage space in the warehouse which would take it to over five employees. The area of employment land was likely to be greater than the 0.287 hectares suggested by the supporting statement at nearer 0.4 hectares.
- (3) The extant planning permission for APP/2016/2116 for three dwellinghouses on site could be implemented until 2020, however, due to the site layout and boundaries it was unlikely that both applications could be implemented/developed at the same time.

The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issue for the Notice of Review as presented before them was whether the proposal was in accordance with the policy criteria and the glossary definition for small scale development in the Aberdeen Housing Market Area.

During discussion, the Local Review Body took cognisance of the previously granted development on the site, APP/2016/2116 which showed the indicative three dwellinghouses within a slightly smaller site than was being considered as part of the review before them. Consideration was given as to whether APP/2016/2116 should be revoked if the Notice of Review were upheld and it was agreed that it would not be necessary as the dwellinghouses would appear to be shown on the yard and parking spaces of the commercial building and as such it would be unlikely that both proposals could be developed on that site.

The Local Review Body then focused their attention on the applicant's supporting statement which had confirmed the number of employees would be 4 office based staff in key roles, with the remaining staff being on building sites and only accessing the site to collect materials. As that would be less than five based at the application site, and the employment area was less than 0.5 hectares, they took the view that the proposal would meet the requirement for a small scale development and would be in compliance with Policy R2 of the Aberdeenshire Local Development Plan 2017.

After due consideration, the Local Review Body **agreed** to UPHOLD the Notice of Review and GRANT Full Planning Permission, subject to planning conditions which would be drafted by the Planning Adviser and circulated to members' for approval, in advance of the final Review Decision Notice being issued.

DRAFT