

Local Review Body Decision Notice
Appeal Reference: LRB 441
Planning Reference: APP/2018/2046
Planning Proposal: Planning Permission in Principle for Erection of a dwellinghouse
Address: Site Adjacent to Orchardfold, Upper Tack, Newmachar
Summary of Decision: Following deferral to seek clarification on the matter of rented agricultural land, the LRB agrees with the determination reviewed by it and refuses planning permission in principle.
Policy Issues: Policy R1 Special Rural Areas
Additional Points: The applicant proposed the dwellinghouse as required for an essential worker in a primary industry (agriculture). The LRB noted that the area of land owned was 13ha, whilst 46ha was rented across the wider area. An agricultural labour report had been prepared showing a labour requirement of 1 unit for the whole landholding. One member of the LRB was minded to allow the rented land but the remaining members considered that land which was not owned should not be considered as there was no security of tenure. As a result, there was insufficient evidence that the presence of an a worker on the site was essential to the operation of the farm enterprise.
Actions: Note Decision and position regarding rented agricultural land.

Aberdeenshire Council Local Review Body

Reference LRB 441 APP/2018/2046

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Site Adjacent to Orchardfold, Upper Tack, Newmachar
- Application for review by John Wink Design, on behalf of their client, Mr I. MacDonald, against the decision by an Appointed Officer.
- Application reference APP/2018/2046 for Planning Permission in Principle for the erection of a dwellinghouse refused by decision notice dated 01 November 2018.
- Application drawings: Site Location Plan 1722-020 C, Proposed Visibility Splay Plan 1722-021 C.
- No site inspection took place.

Date of Decision: 4 July 2019

Decision

The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Planning Permission in Principle in accordance with the Appointed Officer's decision as set out in paragraph 4.0 below.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The LRB initially reviewed the determination of the above application for planning permission at its meeting held on 29 March 2019. The LRB was attended by Councillors P Johnston (Chair), P Gibb, A McKelvie and I Sutherland.
- 1.3 The LRB was shown projected plans and photographs by the Planning Adviser. These showed the application site and its relationship to the surroundings. The Planning Adviser summarised the application, representation and consultation and the notice of review.
- 1.4 The LRB questioned the Planner Adviser over the nature of the let land and its location. The Planning Adviser indicated that the location of the

let land was not specifically mapped within the Supporting Information however the supporting statement referred to both the total labour requirement (including the let land) and the amount of land directly owned by the applicant which was adjacent to and included the proposed site of the dwelling.

- 1.5 The LRB asked the Planning Adviser as to the Planning Service's view on let land however the Planning Adviser advised that in this case it was a matter for the LRB as decision maker, and based on the evidence, to determine whether the let land should be considered as part of the Agricultural Needs Case and referred members to the wording of Policy R1: Special Rural Areas.
- 1.6 The LRB gave consideration as to whether a site inspection, a hearing or further information would be helpful. The LRB decided to defer consideration of the Review to allow for further procedure in the form of provision of the following further information:
 - (1) that the Planning Service provide clarification/definitions of rented land and a normal agricultural tenancy and why rented land cannot be included in the land calculations for the requirement for an essential agricultural worker and;
 - (2) that the applicant provide details of all rented farm holdings (East Torryleith, Rosehall, Potterton and Belhelvie) and the geographical spread distances from Orchardfold.
- 1.7 That information was received and a further meeting held on the 23 May 2019. The LRB was attended by Councillors P Johnston (Chair), P Gibb, A McKelvie and I Sutherland. The LRB noted that all of the documents requested had been circulated. The LRB agreed that they now had sufficient information to resume consideration of the Notice of Review.

2.0 Proposal

- 2.1 The proposal is for the erection of a single dwelling house on a site of around 0.4 hectare in size which is located within the south east corner of a field approximately 1.5 miles south of the settlement of Newmachar and approximately 185 metres east of the A947 Dyce to Oldmeldrum public road. The site lies within the Aberdeen Housing Market Area but outside of the green belt.
- 2.2 The site is bounded by the Formartine and Buchan Way to the east and agricultural fields owned by the applicant lie to the north and west. A minor road defines the southern boundary of the site and would be used to access the proposed dwelling. To the south of the road there are agricultural buildings owned by the applicant which include a building used in association with an engineering business owned by the applicant.

- 2.3 As the application is in principle only an indicative location for the house has been provided. It is proposed to connect the house to the public water supply and foul water drainage would be via a septic tank with discharge to land via a soakaway.
- 2.4 The application has been presented as being required in association with an essential worker, namely the applicant who owns a farm which includes owned land extending to 13ha located to the north and west of the proposed dwelling. The house is considered by the applicant to be essential to the operation of the business. Further land is rented in a number of different locations within the wider area. This additional rented land extends to 46ha.
- 2.5 The documents submitted as part of the planning application were:
- Supporting statement
 - Drainage Assessment
 - Agricultural Labour Requirement Report undertaken by SAC Consulting

3.0 Reasoning

- 3.1 The Local Review Body agreed that the main determining issue for the Notice of Review as presented before them was the principle of development, in the case, whether a house for an essential worker in the countryside could be supported under the specific criteria for essential workers accommodation as set out in Policy R1: Special Rural Areas.
- 3.2 The LRB agreed that the Appointed Officer had identified the relevant Aberdeenshire Local Development Plan 2017 (ADLP) policies and those were as follows:
- Policy R1: Special Rural Areas;
Policy P1: Layout, siting and design;
Policy PR1: Protecting important resources;
Policy C1: Using resources in buildings;
Policy RD1: Providing suitable services; and
Policy RD2: Developers' obligations.
- 3.3 The LRB considered the further information provided by the Planning Service which stated that there was no distinction made, nor policy definition within the Aberdeenshire Local Development Plan 2017, for 'rented land' and 'a normal agricultural tenancy'. Rented land could cover a variety of terms and duration, and by definition, the nature of those agreements differ and the Service could not confirm what type of tenancy the applicant had or whether a tenancy was in place. The Planning Service also stated that rented land should not be included as part of the labour requirement where there was no security of tenure associated with that type of land and in most cases it would be unlikely

that rented land could be considered as a justification for a new dwellinghouse.

- 3.5 The LRB took cognisance of the distances of all the applicant's farm holdings (including rented land and the proximity to Orchardfold) and the applicant's comments on the Planning Service submissions which argued that the applicant had farmed the land for the last 5 years, showing the growth of the farming enterprise, and that regardless of the rented land the labour requirement for Orchardfold would require 1 unit to operate due to the labour intensive farming undertaken there.
- 3.6 In discussing the additional information opposing views were expressed by LRB members as to the inclusion of the rented land within the labour calculations for the farm business. One member of the LRB was minded to support the Notice of Review on the grounds that rented land should be included in the labour calculations as the farmer was running a business and many farmers have an element of rented land in addition to a core area of owned farmland.
- 3.7 The remaining members of the LRB considered that rented farm holdings could not be included in labour calculation. It was accepted that the farmer had held the rented holdings for a number of years however ultimately there was no security of tenure and only the land in direct ownership and adjacent to the house should be considered. Based on this, the LRB considered there wasn't sufficient evidence to suggest that the presence of the worker on site was essential to the operation of the farm enterprise.
- 3.8 After due consideration, the LRB agreed, with the noted exception of one member, to uphold the Appointed Officer's decision to refuse Planning Permission in Principle for the reasons contained in the Decision Notice issued on 1 November, 2018.

4.0 Reasons for refusal

- (1) The proposal is not acceptable in principle as it does not comply with Policy R1: Special rural areas of the Aberdeenshire Local Development Plan 2017. Specifically, insufficient evidence has been provided to demonstrate that the area of farmland directly surrounding the site at Orchardfold would justify an essential farm worker. Furthermore, the proposal does not comply with any other criteria of Policy R1: Special rural areas and therefore cannot be supported.


Karen Wiles
Head of Legal and Governance

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A (8)

Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. 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 V of the Town and Country Planning (Scotland) Act 1997.