

Aberdeenshire Council Local Review Body

Reference LRB 330 M/APP/2016/0083

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: 1 Knocks Cottages, Birkhall, Ballater
- Application for review by Ann Chinner & Ann Chant against the decision by an Appointed Officer
- Application reference M/APP/2016/0083 for full planning permission for alterations and extension to dwellinghouse refused by decision notice dated 29th February 2016
- Application drawings: Location Plan & Site Plan @ 1/25000, 1/2500 and 1/500 scale (drawing no: AC/16/01) and Elevations and Floor Plans @ 1/100 and 1/50 scale (drawing no: AC/16/02).
- No site inspection took place

Date of Decision: 9 May, 2016

Decision

The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Full Planning Permission in accordance with the Appointed Officer's decision.

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 reviewed the determination of the above application for planning permission at its meeting held on 29 April 2016. The LRB was attended by Councillors S W Pratt (Chair), R Cassie, F C P Hood, P K Johnston, C H Nelson and M Stewart.
- 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.
- 1.4 The LRB agreed that there was sufficient information before it in order to consider the application and that no further information was required.

2.0 Proposal

- 2.1 The property is a traditional slate and stone constructed semi-detached property located at Birkhall, approximately 1.3km south west of the Ballater Settlement boundary. It is adjoined to a neighbouring property to the south west and there are similar semi-detached cottages further to the west to form a row of 4 dwellinghouses. The property is 1 and a half storeys in height with traditional style dormers on the front elevation and a flat roof rear extension. To the front of the property is a long garden with hedged boundary treatments. The site is bound by mature trees to the rear and east. Access is taken from the road to the front and follows on from the west of the neighbouring property around the rear.
- 2.2 The proposal seeks an L-shaped wrap around extension which would project approximately 5m to the east side and 2.5m to the rear. It would measure approximately 7.8m from the front to rear. The side extension would be single storey in height constructed of granite wall materials to match existing, grey coloured roof slates to match existing with a zinc ridge, and double glazed timber framed doors and cast iron rain water goods. On the east elevation the windows would be sash and case look alike redwood frames painted white. On the rear elevation it would extend upwards to 1 and a half storeys to form bedrooms on upper level, replacing the existing rear extensions. This would feature flat roof dormer windows which would not extend above the ridge height. The dormers would be finished in grey slate materials and the lower level of the rear elevation would be grey coloured wet dash render.

3.0 Reasoning

- 3.1 The main determining issue in this review was whether a bat survey was required prior to determination of the application or whether it could be dealt with by suspensive condition having regard to impact upon the European Protected Species and protecting the natural heritage.
- 3.2 The LRB agreed that the Appointed Officer had identified the relevant Cairngorms National Park Local Development Plan 2015 (CNPLDP) policies and these were as follows:
- Policy 3: Sustainable Design
Part 4 – Alterations to the existing building stock; and
- Policy 4: Natural Heritage
Part 4 – Protected Species.
- 3.3 The LRB gave consideration as to whether a site inspection or further information would be helpful. After some discussion about the possibility of deferring the Notice of Review to allow submission of a bat survey, the LRB agreed to proceed to determine the Notice of Review on the basis of the information before them.

- 3.4 During his presentation the Planning Adviser had highlighted to the LRB that 2 representations had been received to the application and he had also summarised the consultation responses received.
- 3.5 The Planning Adviser also informed the LRB of advice that had been contained within a letter issued by the Chief Planner to Heads of Planning in Scotland in May 2006. This reminded planning authorities that in order to ensure that all decisions are compliant with the Habitats Directive and the Regulations, authorities should fully ascertain whether protected species are on site and what the implications of this might be before considering whether to approve an application or not. The Planning Adviser also referred the LRB to paragraph 214 of Scottish Planning Policy (2014) which reads *'the presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications. If there is evidence to suggest that protected species is present on site or may be affected by a proposed development, steps must be taken to establish their presence. The level of protection afforded by legislation must be factored into the planning and design of the development and any impacts must be fully considered prior to determination of the application.'*
- 3.6 In this case the LRB had a great deal of sympathy with the applicants who were seeking the planning permission to be approved subject to a condition requiring the need for a bat survey in order for them to get builders to provide quotes for the works associated with the proposed alterations and extensions. The LRB also noted from the applicants statement that mitigation measures are very likely to be able to be incorporated into the design should the presence of bats be found.
- 3.7 However the LRB also considered the points raised by the Appointed Officer in the Report of Handling and also the guidance and advice issued by Scottish Government. Although the LRB would normally have the ability to impose a condition that would make an unacceptable development acceptable, this course of action was clearly not open to the LRB in this instance. As it is a requirement to find out if bats are present on a site before an application can be determined, the LRB therefore agreed with the Appointed Officer's decision but were mindful that the applicants would be able to undertake the necessary survey work once bats were active (from May onwards) and then they could resubmit a fresh planning application with the required bat survey report.
- 3.8 In conclusion, whilst the proposal is deemed to be acceptable in design terms, the proposal cannot be fully assessed against the relevant policies of the Cairngorms National Park Local Development Plan 2015 due to the lack of information on a full bat survey. The LRB therefore resolved to uphold the decision of the Appointed Officer, thereby refusing Full Planning Permission for the reason set out below.

4.0 Reason for refusal

The application is deficient in information in respect of a Bat Survey. It is therefore not possible to make a full assessment of the implications of the development with regard to the impact upon the European Protected Species of bats with regard to Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2015.



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.