

ABERDEENSHIRE COUNCIL**LOCAL REVIEW BODY****WOODHILL HOUSE, ABERDEEN, FRIDAY 25 NOVEMBER, 2016**

Present: Councillors S W Pratt (Chair), P W Bellarby, F C P Hood, P K Johnston and M Stewart.

Apologies: Councillor R Cassie.

Officers: Planning Adviser (Mark Myles), Senior Solicitor – Governance (Fiona Stewart) and Senior 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 Councillor Hood declared an interest in Agenda Item 6, LRB 353 as the application site was within his ward and as such he would withdraw from proceedings when that Review was being determined.

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.

3. 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 (2012).

NEW REVIEWS

4. LRB 356 – NOTICE OF REVIEW AGAINST IMPOSING CONDITION 2 ON THE GRANTED PLANNING CONSENT FOR FULL PLANNING PERMISSION FOR ERECTION OF DOMESTIC GARAGE AND STORE AT PERCYHORNERS COTTAGE, FRASERBURGH, ABERDEENSHIRE, AB43 7EH – REFERENCE: APP/2016/1566

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, F C P Hood, P K Johnston and M Stewart.

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 impose Condition 2 on the granted planning consent for Full Planning Permission for the Erection of a Domestic Garage and

Store at Percyhorner Cottage, Fraserburgh, Aberdeenshire, AB43 7EH – Reference: APP/2016/1566.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure the applicant had requested further written submissions and a review of the documents as presented before them. 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 had been received during the consultation period.

Further to consultations undertaken it was reported that Roads Development had no objection to the proposed development subject to conditions.

The Local Review Body then considered condition 2 applied to the granted planning consent, namely:-

- (2) The development shall be served in accordance with the approved drawing and the following details:-
- (a) The maximum gradient of the first 5m of the existing access must not exceed 1 in 20.
 - (b) Prior to commencement of development, first 5m of driveway (measured from edge of road or back of footway) to be fully paved.
 - (c) Prior to occupancy of development, Off-Street parking for 2 cars surfaced in hard standing materials must be provided within the site.
 - (d) Prior to commencement of development, a lay-by measuring 8.0m x 2.5m with 45 splays to be formed on frontage of the site and the proposed vehicular access to be taken via this. Construction shall be to a standard appropriate to the location and must be agreed in advance with Roads Development.
 - (e) Prior to commencement of development, visibility plays measuring 2.4m by 215m to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level.
 - (f) Prior to occupancy of development a refuse bin uplift store area shall be constructed (behind any visibility splay) so as to be accessible for bin uplift and shall be secure enough to prevent empty bins from being windblown. Details must be submitted to Roads Development for approval.
 - (g) Prior to occupancy of development a suitable vehicle turning area, measuring not less than 7.6m x 7.6m, must be formed within the site to enable all vehicle movements onto or from the public road to be carried out in a forward gear.

Reason: In order to ensure that the development is served by appropriate standard of access and associated servicing in the interests of road safety.

The Local Review Body considered that the relevant policies as contained within the Aberdeenshire Local Development Plan (2012) were: Policy 8: Layout, Siting and Design of New Development and SG LSD2: Layout, Siting and Design of New Development and SG LSD3: House Extensions; and Policy 9: Developer Contributions and SG Developer Contributions 2: Access to New Development.

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. 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 related to the provision of an appropriate standard of access and associated servicing and whether this requirement can legitimately be sought by condition of planning permission, bearing in mind the six 'tests' contained in Circular 4/1998 – Use of Conditions in Planning Permissions.

During discussion the Local Review Body took the view that the planning permission for the replacement garage would not have been refused if condition no. 2 had not been imposed. Specific reference was made to the Roads Department consultation response which clearly acknowledged that sufficient visibility was already provided at the junction; parking spaces were already provided within the site curtilage; a vehicle turning area could be accommodated on the site and that the site had indirect access onto the public road. The Local Review Body were unanimous in their view that the Appointed Officer had effectively applied a standard condition with insufficient recognition of the existing site access and servicing arrangements and the land ownership.

The Local Review Body then addressed each part of the condition in detail and identified the reasons why they were minded that each of the criteria was either unnecessary, irrelevant to the development that had been permitted, un-enforceable and unreasonable and as such failed to meet the relevant 'tests' for applying conditions as set out in Circular 4/1998.

The Local Review Body then noted the contents of the Agent's letter dated 19 August 2016 as presented as Appendix 3(i) which had sought clarification on why the condition had been imposed and which had requested advice for its resolution. It was reported that the Appointed Officer had responded to the letter on 16 September and confirmed that Aberdeenshire Council would not take enforcement action in respect to the requirements of condition no 2. This provided further evidence to the LRB that the condition should not have been included.

The Local Review Body then noted the agent's submission of the award of costs against the Council (as set out in Section 6.1 of their statement) and agreed that the Local Review Body was not empowered to award expenses in respect of Notice of Review cases as Sections 265/266 of the Principal Act can only apply to appeals that are required to be submitted to the Scottish Government.

Finally the Local Review Body noted that condition no.2 would require that the development to be served in accordance with the approved drawings which on the Proposed Site Plan (drawing no. 16/384/02 A) which shows that the existing garage should be demolished as part of the development. The Local Review Body therefore sought an amendment to the wording of the condition to make it clear that the existing single garage would require to be demolished as part of the development to erect the new double garage, namely:

Amend Condition 2 to read:-

2. The development shall be served in accordance with the approved plans and the existing garage shall be demolished and removed from the site and the ground reinstated as garden ground, all within 4 months from the commencement of the development.

Reason: In accordance with the terms of the application and to safeguard the residential amenity of the existing dwellinghouse.

After due consideration, the Local Review Body **agreed**:-

- (1) to Uphold the Notice of Review and agree that Condition 2 from granted planning consent APP/2016/1566 should be removed;

- (2) that a specific condition should be applied to the Review Decision Notice which should reinforce the requirement that the applicant should demolish and remove the existing garage; and
- (3) Awards of expenses did not come under the remit of the Local Review Body and as such the Applicant/Agent should be advised accordingly.

5. LRB 357 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT SITE TO THE REAR OF 10 GAVAL STREET, FETTERANGUS, ABERDEENSHIRE, AB42 4HK – REFERENCE: APP/2016/1814

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, F C P Hood, P K Johnston and M Stewart.

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 Planning Permission in Principle for the Erection of a Dwellinghouse at the Site to the Rear of 10 Gaval Street, Fetterangus, Aberdeenshire, AB42 4HK – Reference: APP/2016/1814,

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure the applicant had requested (1) further written submissions, (2) one or more hearing sessions, (3) a site inspection and a review of the documents as presented before them. 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 had been received during the consultation period.

Further to consultations undertaken it was reported that Developer Obligations had commented that a contribution to affordable housing had been agreed via a commuted sum and Roads Development had commented that it had no objections to the proposed development subject to conditions.

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

- (1) The proposed development is considered contrary to the Aberdeenshire Local Development Plan, in particular Policy 8: Layout, Siting and Design of New Development and Supplementary Guidance LSD2: Layout, Siting and Design of New Development and LSD4: Infill Development as the proposal fails to respect its setting, its orientation and layout are not in-keeping with the existing area. The proposal also fails to contribute to the sense of place, as it erodes the existing character. The proposed house would also cause an unacceptable impact on neighbouring properties due to loss of privacy.

The Local Review Body considered that the relevant policies as contained within the Aberdeenshire Local Development Plan (2012) were: Policy 8: Layout, Siting and Design of New Development and SG LSD2: Layout, Siting and Design of New Development, SG LSD4: Infill Development and SG LSD11: Carbon Neutrality and Policy 9: Developer Contributions and SG Developer Contributions 1: Developer Contributions, SG Developer Contributions 2: Access to New Development and SG Developer Contributions 3: Water and Waste Water Drainage Infrastructure. Other material considerations were: Aberdeenshire Council Planning Advice 6/2012 – Implementation of Policy SG LSD2 Layout, Siting and Design of New Development; Aberdeenshire Council Technical Advice Note (August 2012) further

information on the design issues to consider new development and Scottish Government Designing Street: A Policy Statement for Scotland, March, 2010.

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. 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 related to the principle of development and potential impacts of this infill type of development on the amenity and character of the surrounding area and on neighbouring properties.

During discussion the Local Review Body acknowledged that the development was within the settlement boundaries which would ordinarily be accepted if it could meet the required layout, siting, design and amenity considerations. However, the Local Review Body recognised that this could only be fully determined through a detailed application and for the application before them indicative house design meant that they could not assess the suitability of a proposed house on the site.

The Local Review Body made reference to the agent's statement which highlighted that term 'overdevelopment' had not been used as a reason for refusal or raised as a specific area of concern throughout the planning process, however, they took the view that a large part of the proposed site was currently unused amenity ground and as such they took the view that the land still provided valuable amenity space for the wider neighbourhood (not just the applicant) and that the rear gardens and access area formed an important part of the general character and contributed to the pattern of development and spacing in the area.

When assessing the indicative layout the Local Review Body considered that there would be significant constraints in terms of being able to accommodate a house on that site due to the distances from the adjacent boundaries and the extent of the useable garden areas that would be available and these would be contrary to the advice set out in the council's Technical Advice Note (August 2012).

The Local Review Body also highlighted that the proposed loss of trees and the overall size, scale, footprint and orientation of any development was considered to fail to contribute to the sense of place and as noted in the Report of Handling on page 83 of the papers, it would be difficult to see how a house on this site could be 'welcoming' and provide high quality development due to its location behind existing dwellings, at an angle perpendicular to those houses and being 40 metres away from the public road.

It was recognised that other infill properties had been allowed on nearby sites but the Local Review Body agreed that those were situated within the rear parts of long gardens; sat wholly within the original feu; had defensible space to the principal elevation and were accessed immediately adjacent to the 'host' dwelling which contrasted to the application as presented before them. The LRB therefore agreed that the proposal to erect a house on that site would fail to respect its setting and that its orientation and layout would not be in keeping with the character of the existing area and that a proposed house would cause an unacceptable impact on the amenity of neighbouring properties which would be contrary to Policy 8 and Supplementary Guidance LSD2 and Supplementary Guidance LSD4 of the Aberdeenshire Local Development Plan, 2012.

After due consideration, the Local Review Body **agreed** to Dismiss the Notice of Review and Uphold the Appointed Officer's decision to Refuse Planning Permission in Principle.

6. LRB 358 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT SITE AT GLENHEAD CROFT, KEMNAY, ABERDEENSHIRE – REFERENCE: APP/2016/1207

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, F C P Hood, P K Johnston and M Stewart.

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 Planning Permission in Principle for the Erection of a Dwellinghouse at a Site at Glenhead Croft, Kemnay, Aberdeenshire – Reference: APP/2016/1207.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure the applicant had requested a site inspection and a review of the documents as presented before them. 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 had been received during the consultation period.

Further to consultations undertaken it was reported that Developer Obligations had commented that a contribution to affordable housing had been agreed via a commuted sum and Roads Development had commented that it had no objections to the proposed development subject to conditions.

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

- (1) The proposed dwellinghouse does not accord with Policy 3: Development in the Countryside and RD 1: Housing and Business Development in the Countryside of the adopted Aberdeenshire Local Development Plan 2012. The erection of a dwellinghouse on the application site cannot be justified as the existing building is considered to be temporary in nature with no independent curtilage and no foundations.

The Local Review Body considered that the relevant policies as contained within the Aberdeenshire Local Development Plan (2012) were: Policy 3: Development in the Countryside and SG RD1: Housing and Business Development in the Countryside; Policy 8: Layout, Siting and Design of New Development and SG LSD2: Layout, Siting and Design of New Development, SG LSD9: Hazardous Development and SG LSD10: Contaminated Land; Policy 9: Developer Contributions and SG Developer Contributions 1: Developer Contributions, SG Developer Contributions 2: Access to New Development and SG Developer Contributions 3: Water and Waste Water Drainage Infrastructure. Other material considerations were Aberdeenshire Council Planning Advice 01/2016 Housing and Business Development in the Countryside.

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. 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 that would normally apply to the erection of new development in the countryside.

During discussion opposing view were expressed.

The majority view held was in support of the proposed development on the grounds that they did not agree with the Appointed Officer's view that the existing building would be considered as temporary in nature and as having no foundations. Having considered the information contained within the applicant's submission and the photo montages presented, they took the view that the shed had been on site for a period of over 50/60 years and was sited upon a concrete pad and while it was used for ancillary domestic storage because it was there, it was not being used for its original purpose (a chicken shed) and as such would in their view be considered to be disused and redundant.

Concerns were raised regarding the proximity of a high pressure gas pipeline to the application site (31 metres to the proposed development) and while it was recognised that the Scottish Gas Network had withdrawn their original objection on condition that they be involved at all stages of the construction from initial groundworks through to completion it was agreed that this should be conditioned as part of any planning consent if the original decision was overturned.

Reference was then made to the issues raised within the consultee responses on Page 122 of the agenda papers and it was agreed that additional conditions would be required to address the concerns raised by Developer Obligations; Contaminated Land; Environmental Health; Roads Development and the Scottish Gas Network if the original decision was reversed.

One member was opposed to the proposed development on the grounds that they took the view that the building would be considered to be still in use, albeit not for its original purpose, but could not be considered as redundant as it was currently being used for storage purposes. It was highlighted that many temporary sheds were built on concrete foundations and built for one purpose but that may change over a period of time and that did not mean that it would not be considered to be a temporary in nature. Having considered the information before them they had concerns that overturning the Appointed Officer's decision could result in a precedent being set for other similar developments if granted.

After due consideration, the Local Review Body **agreed** to reverse the determination reviewed by it and GRANT Planning Permission in Principle, subject:-

- (1) Standard conditions;
- (2) Developer obligations;
- (3) Contaminated land – standard in formatives;
- (4) Environmental Health – maintenance of the proposed septic tank and noise during construction;
- (5) Roads – standard conditions
- (6) Scottish Gas Network – applicant to work with SGN to agree measures which would be necessary to safeguard the security of the gas pipeline.

Councillor Johnston did not accord with this view and requested that his dissent be recorded.

7. LRB 359 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AT SITE TO THE REAR OF 16 CHURCH TERRACE, TURRIFF – REFERENCE: APP/2016/1829

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, F C P Hood, P K Johnston and M Stewart.

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 at the Site to the Rear of 16 Church Terrace, Turriff – Reference: APP/2016/1829.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure the applicant had requested a site inspection and a review of the documents as presented before them. 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 had been received during the consultation period.

Further to consultations undertaken it was reported that Developer Obligations had confirmed that contributions would be required and heads of terms had been agreed towards Affordable Housing and Education; Roads Development had confirmed that they had no objection to the proposed development subject to conditions and Scottish Water had been consulted but had not submitted a response during the consultation period.

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

- (1) The proposed development is contrary to Policy 8: Layout, Siting and Design of New Development and Supplementary Guidance LSD4: Infill Development of the Aberdeenshire Local Development Plan, 2012 in that the development would constitute over development of the site and erode the character and amenity of the surrounding area.
- (2) That by reason of its design, scale and position, the proposed dwelling would unduly overlook and result in an undue loss of privacy for the neighbouring properties to the west. The proposed development would therefore have a detrimental impact on the amenity of those properties and would not comply with Policy 8: Layout, Siting and Design of New Development and Supplementary Guidance LSD2: Layout, Siting and Design of New Development.

The Local Review Body considered that the relevant policies as contained within the Aberdeenshire Local Development Plan (2012) were: Policy 8: Layout, Siting and Design of New Development and SG LSD4: Infill Development, SG LSD2: Layout, Siting and Design of New Development and SG LSD11: Carbon Neutrality in New Development and Policy 9: Developer Contributions and SG Developer Contributions 1: Developer Contributions, SG Developer Contributions 2: Access to New Development and SG Developer Contributions 3: Water and Waste Water Drainage Infrastructure.

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.

During discussion the Local Review Body agreed that it would be beneficial to their determination of the Notice of Review as presented before them to undertake an accompanied site inspection to the application site and surrounding area to allow them to get a real appreciation of scale, density and position of proposed dwellinghouse to ascertain whether it would result in loss of privacy for neighbouring properties.

After due consideration, the Local Review Body **agreed** to defer consideration of the Notice of Review, to allow them to follow further procedure by way of an accompanied site inspection to the application site and surrounding area which would take place on Friday 16 December, 2016 followed by a formal meeting on the same day to determine the Notice of Review.