

ABERDEENSHIRE COUNCIL

LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 28 APRIL, 2017

Present: Councillors S W Pratt (Chair), P W Bellarby, R Cassie, F C P Hood, C R McKail, C Shand and M Stewart

Apologies: Councillor P K Johnston

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 R Cassie declared an interest in LRB 372 and F C P Hood declared an interest in LRB 373 as the application sites for those applications were within their wards. Both members' intimated that they would withdraw from proceedings when the review within their ward was being considered.

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. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 31 MARCH, 2017

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 31 March, 2017 and this was duly signed in public.

NEW REVIEWS

5. LRB 371 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR CHANGE OF USE OF LAND FROM PUBLIC OPEN SPACE TO PRIVATE GARDEN GROUND (RETROSPECTIVE) AT 5 EARL'S REE, MEIKLE WARTLE, INVERURIE, ABERDEENSHIRE, AB51 5AF – REFERENCE: APP/2016/2682

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, R Cassie, F C P Hood, C Shand and M Stewart

There had been submitted a Notice of Review and supporting documents by the applicant which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the Change of Use of Land from Public Open Space to Private Garden Ground (Retrospective) at 5 Earl's Ree, Meikle Wartle, Inverurie, Aberdeenshire, AB51 5AF – Reference: APP/2016/2682.

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; 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 then ended his presentation by reporting that 1 valid letter of representation had been received which was opposed to the retrospective development and the material issues raised within that objection were:-

- loss of public open space, thus loss of amenity for Meikle Wartle;
- no alternative open space proposed;
- an enforcement notice has been served and has not been carried out; and
- the development will set a precedent for future loss of open space within the development.

It was reported that the objector had submitted an additional representation during the consultation period for the Notice of Review as presented on Page 73 of the agenda papers which had reiterated the comments made in their original objection to the development. The applicant had responded to those comments as presented on page 77 of the agenda papers which had argued that there were public open spaces in Meikle Wartle and there was some uncertainty with regards to the boundary of the applicant's property and the public open space in question. The applicant had suggested that as the boundary line was only 1 metre from the applicant's bay window and as such a small area of public open space would impact on his lifestyle and personal amenity.

Further to consultations undertaken, it was reported that Landscape Services had not commented on the retrospective application.

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

- (1) The proposal is considered to be contrary to Policy 8: Layout, Siting and Design of New Development, SG LSD 5: Public Open Space of the Aberdeenshire Local Development Plan 2012 as it would contribute to the loss of a functional area of open space and strategic landscaping and it cannot be demonstrated that the proposal conforms to points 1 and 2 of the policy.
- (2) The proposal would be contrary to SG LSD 2: Layout, Siting and Design of New Development of the Aberdeenshire Local Development Plan 2012 as the conversion to garden ground would have a detrimental impact on the layout of the existing Earl's Ree development, reducing the amenity of the existing built and natural environment.

The Local Review Body considered that the relevant policies as contained within the 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 LSD5: Public Open Space.

The Local Review Body were then reminded that the Aberdeenshire Local Development Plan, (2012) policies had now been replaced by the policies contained within the newly adopted

Aberdeenshire Local Development Plan, 2017 and as such the Local Review Body considered that the relevant policies within the Aberdeenshire Local Development Plan (2017) were: Policy P1: Layout, Siting and Design and Policy P2: Open Space and 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 was whether the change of public open space to private garden ground and the loss of strategic landscaping on the edge of the settlement would have a detrimental impact on the layout of the existing development.

During discussion the Local Review Body took cognisance of the applicant's statement which had stated that they had been under the impression when they purchased their property that the site being considered had formed part of the established garden ground for that property.

The Local Review Body expressed some sympathy with the applicant's position, however, agreed that title searches undertaken by their solicitors prior to purchase of the applicant's property were private legal matters which could not form part of their determination of the submission before them. The Local Review Body agreed that they may have been able to consider that information if the applicant had submitted a copy of the title plan with their review documents which would have clearly identified the extent of the land ownership.

The Local Review Body were minded the Notice of Review before them must be determined solely on its planning merits and as such they took the view that the proposed change of use and net loss of public open space and reduction in the strategic landscaping on the edge of the settlement would not benefit the community as a whole.

After due consideration, the Local Review Body **agreed** to DISMISS the Notice of Review and Uphold the Appointed Officer's Decision to Refuse Full Planning Permission.

6. LRB 372 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 1 WIND TURBINE (HUB HEIGHT 23.4 METRES), TOTAL HEIGHT 33.47 METRES AND ASSOCIATED INFRASTRUCTURE AT LOWER CUSHNIE, GAMRIE, BANFF, ABERDEENSHIRE, AB45 3HL – REFERENCE: APP/2016/1945

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, F C P Hood, C Shand 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 1 Wind Turbine (Hub Height 23.4 Metres), Total Height 33.47 Metres and Associated Infrastructure at Lower Cushnie, Gamrie, Banff, Aberdeenshire, AB45 3HL – Reference: APP/2016/1945.

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 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 then ended his presentation by reporting that 1 valid letter of representation had been received which was in support of the proposed development and the material issues raised within that letter of support was:-

- Site history;
- Need for renewable energy; and
- Positive impact on business and visitors.

Further to consultations undertaken, it was reported that Aberdeen International Airport had no objection to the proposed development; Atkins had no objection to the proposed development; Defence Infrastructure Organisation had no objection to the proposed development, however, had requested that if granted they were informed of the start and end of construction, the maximum height of construction equipment and the latitude and longitude of the turbine; NATS (NERL Safeguarding) had confirmed that the proposal would not conflict with safeguarding criteria; Ofcom had no identified links in the immediate vicinity; Arqiva did not respond during the consultation period; and JRC had not responded during the consultation period.

It was further reported that the Environmental Health Service had responded during the consultation period and had advised that they had a holding objection to the proposed development on the grounds of insufficient information available to enable potential noise impacts to be properly considered. The Planning Service had subsequently advised that following the issue of the decision notice to the applicant, a further response was received from the Environmental Health Service dated 8 March, 2017 stating that they had no objection to the proposal, subject to conditions which were presented on pages 235 – 243 if the agenda papers.

Two further responses were received from Atkins and Arqiva to the Notice of Review as presented on page 527-528 of the agenda papers and both had confirmed that they both had no objection to the proposed development.

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

- (1) Insufficient information has been provided to allow full consideration of the potential impacts on the amenity of dwellinghouses, as stated in the holding objection from Infrastructure Services (Environmental Health). Therefore, there is insufficient information to demonstrate compliance with Policy 3 and SG RD 2: Wind Farms and Medium to Large Wind Turbines.

As the holding objection had now been withdrawn, the Local Review Body then considered the Planning Service recommendation that the proposed development was now in compliance with Policy 3 and SG Rural Development 2 of the Aberdeenshire Local Development Plan 2012 and as such the application should be granted subject to the following conditions:-

1. No works in connection with the development hereby approved shall commence unless a fully detailed scheme for the restoration of the site has been submitted to and approved in writing by the planning authority. The restoration of the site shall be carried out in complete accordance with the approved restoration scheme.

Reason: In the interests of visual amenity and landscape protection.

2. No works in connection with the development hereby approved shall commence unless details of the routes of all power cables and a ground reinstatement plan have been submitted to and approved in writing by the planning authority. All cables shall

be located underground and the ground thereafter restored in complete accordance with the approved restoration scheme.

Reason: In the interests of visual amenity and landscape protection.

3. No works in connection with the development hereby approved shall commence unless a site specific construction method statement, including details of waste, surface water run off, road construction, environmental management and the timing of works, has been submitted to and approved in writing by the planning authority. The development shall be carried out in complete accordance with the approved construction method statement.

Reason: In the interest of landscape and environmental protection.

4. No works in connection with the development hereby approved shall commence unless a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the planning authority. The development shall be carried out in complete accordance with the approved CTMP.

Reason: In the interests of road safety and to avoid degradation of the road and bridge network.

5. No works in connection with the development hereby approved shall commence unless details of the routes of all construction and component traffic has been submitted to and approved in writing by the planning authority. The details shall include complete transportation proposals for all loads to the development site from either their place of manufacture or the port to which they have been delivered. All construction and component traffic shall adhere to the approved routes.

Reason: In the interests of road safety and to avoid degradation of the road and bridge network.

6. No works in connection with the development hereby approved shall commence unless the developer has provided to the planning authority written details of the guarantee or other financial provision that is proposed to be put in place to cover all site restoration and aftercare liabilities at the end of the period of this permission. The developer shall also provide an independent confirmation by a chartered surveyor (whose appointment for this task has been approved by the planning authority) that the amount of the guarantee or financial provision so proposed is sufficient to meet the full estimated costs of dismantling, removal, disposal, site restoration, remediation aftercare liabilities and incidental work as well as associated professional costs. No works shall commence on site unless written confirmation has been given by the planning authority that the proposed guarantee is satisfactory and the developer has confirmed in writing to the planning authority that the guarantee has been put in place. The guarantee or other financial provision must:

- a) be granted in favour of the Council as planning authority;
- b) be from a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;

- c) either contain indexation provisions so that the specified amount of the guarantee shall be increased on each anniversary of the date of this permission by the same percentage increase in the General Index of Retail Prices (All Items) exclusive of mortgage interest published by on or behalf of HM Government between the date of this permission and such relevant anniversary or be reviewable to ensure that the specified amount of the guarantee always covers the value of the site restoration and aftercare liabilities;
- d) come into effect on or before the date of commencement of development, and expire no earlier than 12 months after the end of the aftercare period.

In the event that the guarantee becomes invalid for any reason, no operations shall be carried out in connection with the development hereby approved unless a replacement guarantee, completed in accordance with the terms of this condition has been submitted to and approved in writing by the planning authority.

Reason: To ensure financial security for the cost of the site reinstatement to the satisfaction of the planning authority is in place to provide that the redundant wind turbine and ancillary equipment is removed from the site, in the interests of the visual amenity of the area and environmental protection.

- 7. No works in connection with the development hereby approved shall commence unless details of the finish and colour of the turbine and all externally visible components of the associated ancillary aspects of the proposal have been submitted to and approved in writing to by the planning authority. For the avoidance of doubt the wind turbine shall be finished in a non-reflective off-white/pale grey semi-matt finish and shall not display any advertising on any part of the turbine. The development shall be carried out in complete accordance with the approved details.

Reason: In the interests of the visual amenity of the area.

- 8. No works in connection with the development hereby approved shall commence unless a written scheme has been submitted to and approved in writing by the planning authority setting out a protocol for the assessment and remediation of shadow flicker in the event of a complaint being received from the owner or occupier of a dwelling alleging shadow flicker. For the purposes of this condition “dwelling” means any dwelling which lawfully exists or had planning permission at the date of this permission. The turbine shall operate in accordance with the approved shadow flicker mitigation protocol and must be capable of being programmed to shut down during times and weather conditions when shadow flicker could occur.

Reason: To protect the amenities of nearby residents by reducing and mitigating the impact of shadow flicker.

- 9. No works in connection with the development hereby approved shall commence unless details of an ice detection system as set out in the Renewable Energy Systems report “Assessment of and Actions to Minimise Risk to the Public from Ice on Wind Turbines at Scottish Sites” dated 22 May 2001 (or suitable equivalent procedure supplied by the turbine manufacturer) have been submitted to and approved in writing by the planning authority. The details shall include the operational procedures for automatic or manual shut down, ice removal and protection of personnel including agricultural operators and any members of the public in the immediate vicinity. *The*

turbine shall *not* become operational unless the approved ice protection system has been put in place and the ice protection system shall be retained for the duration of the operation of the development.

Reason: In the interests of public safety.

10. No development in connection with the permission hereby granted shall commence and the access hereby approved shall not be brought into use unless visibility of 25 metres in both directions along the channel line of the public road has been provided from a point 2 metres measured at right angles from the existing edge of the carriageway surface along the centre line of the approved access in accordance with the Council's Standards for Road Construction Consent and Adoption. The visibility splays shall be physically formed on the ground and any existing fences, walls, hedges or other means of enclosure or obstructions within the splays shall be removed and relocated outwith the splays in accordance with the approved plans. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility splays so formed.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.

11. The rating level of noise immissions from the wind turbine forming the development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the table attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this permission. Where the level in the table exceeds the lower fixed limit (35dB $L_{A90, 10min}$ for daytime and quiet daytime hours, and 38dB $L_{A90, 10min}$ for night hours) and also exceeds the measured background noise level, $L_{A90, 10min}$ by 5dB or more, the permitted level will be the lower fixed limit or the background noise level plus 5 dB, whichever is the greater. The turbine shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria and:
 - a. The development shall not be commissioned unless the developer has submitted a list of independent consultants who may undertake compliance measurements in accordance with this condition and has received written approval from the planning authority of that list. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority.
 - b. The development shall not be commissioned unless details regarding the tonality assessment carried out on the turbine and a copy of the standard detailing the assessment method have been submitted to and approved in writing by the planning authority. Where the tone level above audibility is 2dB or greater than a tonal penalty in accordance with figure 16 in the document "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-97) shall be applied to the permitted noise levels set out in this condition.
 - c. The developer shall continuously log power production, wind speed and wind direction. These data shall be retained for a period of not less than 24 months and shall include the average wind speed in metres per second for each 10

minute period. The measuring periods shall be set to commence on the hour and in 10 minute increments thereafter. The wind speed shall be standardised to 10m height. The developer shall provide this information to the planning authority in an electronic spreadsheet (Microsoft Excel or other suitable format agreed with the planning authority) within 21 days of receipt in writing of a request to do so.

- d. The developer shall employ an independent consultant approved by the planning authority to measure, at the developer's own expense, the level of noise emissions from the wind turbines within the first year of the operation of the turbines and every two years thereafter. The biennial noise emissions monitoring shall continue for the working life of the turbine unless the planning authority determines in writing that the period between noise monitoring surveys can be extended or that continued routine monitoring is no longer required. The development shall not be commissioned unless the procedure for measuring the noise emissions for the first year of operation has been approved in writing by the planning authority. Thereafter, all subsequent measurement procedures shall be agreed in writing with the planning authority prior to the commencement of each biennial monitoring survey. The developer shall provide a report detailing the results of the monitoring survey to the planning authority within 3 months of completion of the monitoring survey. Unless otherwise agreed in writing by the planning authority the turbine shall be switched off during part of the monitoring period to permit reliable background noise level data to be determined at the range of wind speeds from 4m/s to 12m/s.
- e. Within 21 days from receipt of a written request from the planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the developer shall, at their expense, employ an independent consultant approved by the planning authority to investigate the cause of the complaint. The investigation shall include measurement of the level of noise immissions from the wind turbine and measurement and analysis of amplitude modulation effects and any tonal component at the complainant's property. The written request from the planning authority shall set out the dates, times and locations to which the complaint relates and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component and/or amplitude modulation effects. Where the property to which a complaint is related is not listed in Table 1 attached to this condition, the developer shall agree in writing with the planning authority the noise limits from those listed in the table that shall be adopted at the complainant's property for compliance checking purposes. The proposed noise limits shall be those limits specified for a listed location which is likely to experience the most similar background noise environment to that experienced at the complainant's property. The chosen noise limits for the complainant's property shall be submitted to and approved in writing by the planning authority before the noise immissions assessment is carried out.
- f. The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the planning authority. The protocol

shall include the proposed measurement location where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain amplitude modulation effects and/or a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the planning authority under paragraph (e), and such others as the independent consultant considers likely to result in a breach of the noise limits.

- g. Within 3 months of the date of the written request of the planning authority made under paragraph (e) the developer shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions. Certificates of calibration of the instrumentation used to undertake the measurements shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise immissions.

Table 1

Location		Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, L _A 10min									
		4	5	6	7	8	9	10	11	12	
Property Name	Map Ref										
Den View	379081 862212	29	33	35	35	35	35	35	35	35	
Hamla Voe	379791 862164	39	32	35	35	35	35	35	35	35	
Lower Cushnie *	379143 862092	35	39	40	40	40	40	40	40	40	
South Cushnie	379200 861513	30	34	37	34	34	34	34	34	34	
<p>Note: for all properties not specified above the predicted noise from the turbine will be calculated using the propagation model in ISO 9613-Part 2 incorporating the recommendations contained in the Institute of Acoustics Good Practice Guide dated May 2013.</p>											

*The applicant has made a claim of financial interest at the property Lower Cushnie and limits are set based on the occupants having a financial interest in the wind turbine development. For the avoidance of doubt a "financial interest" is defined as owning the land on which the turbines are to be sited, leasing the land on a long (greater than 20 year) lease, or being a shareholder or owner of the development company. Where property is owned by someone with a financial interest in the development, but is leased to a third party on a lease longer than 1 year, the occupiers of the property do not have any legal interest in the site and may be protected against amenity intrusions.

In this instance the applicable noise limits will be based on the predicted noise from the turbine, calculated using the propagation model in ISO 9613-Part 2 incorporating the recommendations contained in the Institute of Acoustics Good Practice Guide dated May 2013.

Reason: To ensure that noise limits are not exceeded and to enable prompt investigation of complaints in order to protect nearby residents from undue noise and disturbance from the development.

12. In the event that the wind turbine fails to produce electricity supplied to a local grid for a continuous period of 6 months then, unless such cessation is due to the turbine being under repair or replacement the turbine shall be deemed to have ceased to be required and the turbine and all ancillary equipment shall be dismantled and removed from the site and the site fully restored in accordance with the approved restoration scheme.

Reason: In the interests of safety, amenity and environmental protection of the plant becoming redundant during or at the end of its life span.

13. The wind turbine shall not commence operation unless all soil, machinery, equipment and materials stockpiles associated with the construction of the turbine have been removed and the construction area restored to the satisfaction of the planning authority.

Reason: In the interests of visual amenity and landscape protection.

14. At no time shall the site be illuminated by artificial lighting.

Reason: In the interests of visual amenity and landscape protection.

Informatives-

1. Noise Measurement procedure and Interpretation

“Wind Turbine Noise Level” means the rated noise level due to the wind turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU-R-97, determined by regression analysis using a polynomial with an order no greater than 4th order. Background noise levels and turbine noise levels shall be determined separately for daytime, quiet daytime and night hours.

“Background Noise Level” means the noise level in the absence of noise generated by the development as measured and correlated with wind speeds, determined from regression analysis polynomials (no greater than 4th order).

“Wind Speeds” means wind speeds referenced to a height of 10 meters above ground level. The assessment procedure for this application was the use of SODAR equipment.

“Night Hours” means 23:00 – 07:00 hours on all days.

“Quiet Daytime hours” means 18:00 – 23:00 Monday to Friday, 13:00 – 23:00 Saturday and 07:00 – 23:00 Sunday.

“Daytime Hours” means 07:00 –18:00 hours Monday to Friday, and 07:00 to 13:00 Saturday.

Measurements shall be made using a measurement system of Type 1, or better, (as defined in BS EN 69651), using a fast time weighted response incorporating a windshield using a ½ inch diameter microphone, at a height of between 1.2m and 1.5m above ground level and at least 10m from any wall, hedge or reflective surface.

2. An application for a Road Excavation Permit must be submitted to Infrastructure Services, Area Roads Office at least 15 days prior to the commencement of any excavation works within the boundaries of the public road. Applicants should note that failure to obtain a Permit is an offence in terms of s56 of the Roads (Scotland) Act 1984. Note: The Public Road may incorporate- Carriageway, Verge, Cycleway/ Footway and Visibility Envelopes.

Further details and application forms may be obtained by telephoning the relevant Area Roads Office (see below) or on the council’s website:

Banff & Buchan 01261 813495
Buchan 01771 638103
Formartine 01358 726440
Garioch 01467 628088
Kincardine & Mearns 01569 768465
Marr 019755 64920

3. The developer should contact the local Roads Maintenance Team and Bridges Team at least two months prior to start of works to arrange any necessary permits and surveys to be completed.

For the avoidance of doubt where different transportation routes are required for components or construction vehicles these should be identified separately. Turbine delivery may require a separate route from crane or construction traffic.

4. To avoid delay in the start of development it is advisable to submit ALRP at least 3 months prior to commencement of development. This will enable assessment of the route and any problems to be identified.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2012) were: Policy 3: Development in the Countryside and SG Rural Development 2: Wind Farms and Medium to Large Wind Turbines; Policy 8: Layout, Siting and Design of New Development and SG LSD2: Layout, Siting and Design of New Development; Policy 9: Developer Contributions and SG Developer Contributions 2: Access to New Development; Policy 11: Natural Heritage and SG Natural Environment 2: Protection of the Wider Biodiversity and Geodiversity; Policy 12: Landscape Conservation and SG Landscape 1: Landscape Character; Policy 13: Protecting, Improving and Conserving the Historic Environment and SG Historic Environment 1: Listed Buildings and SG Historic Environment 4: Archaeological Sites and Monuments and Policy 14: Safeguarding of Resources and Areas of Search and SG Safeguarding 2: Protection and Conservation of Agricultural Land.

The Local Review Body were then reminded that the Aberdeenshire Local Development Plan, (2012) policies had now been replaced by the policies contained within the newly adopted Aberdeenshire Local Development Plan, 2017 and as such the Local Review Body considered

that the relevant policies within the Aberdeenshire Local Development Plan (2017) were: Policy C2: Renewable Energy; Policy E1: Natural Heritage; Policy E2: Landscape; Policy HE1: Protecting Historic Building, Sites and Monuments and Policy PR1: Protecting Important Resources.

Other material considerations were Aberdeenshire Council Planning Advice 1/2014 Strategic Landscape Capacity for Windfarms; Aberdeenshire Council Planning Advice 2/2014 Assessing Noise from Wind Turbine Developments; Aberdeenshire Council Planning Advice 12/2012 Landscape Character Advice for Small Scale Development and Aberdeenshire Council Planning Advice 2/2005 Use of Wind Energy in Aberdeenshire Guidance for Assessing Wind Energy Developments.

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 general policy presumption in favour of wind energy development was outweighed by potential adverse impact on amenity.

During discussion the Local Review Body made reference to the policies contained within the Aberdeenshire Local Development Plan 2017 and agreed that in principle the proposed turbine could be accommodated on this site as the potential landscape and visual impact were not considered to be significant, particularly bearing in mind that permission had previously been granted for a wind turbine with a total height of 46.5 metres on the same site.

The Local Review Body then considered the Appointed Officer's reason for refusal which had been based on insufficient information being provided by the applicant to allow full consideration of noise impact which had resulted in the Environmental Health Service maintaining a holding objection to the application as they could not access the potential noise impacts associated with the proposed development.

The Local Review Body then acknowledged that that issue had been mitigated after the decision notice had been issued and that had been evidenced by the response presented by the Environmental Health Service on 8 March 2017 stating that the reason for refusal had been addressed and as such they had withdrawn their objection to the approval of the proposed development subject to the conditions and comments detailed in their response of the same date.

The Local Review were unanimous in their view that the proposal would now conform with Policy C2: Renewable Energy as set out in the Aberdeenshire Local Development Plan, 2017 and they agreed that there were no other technical issues raised or other material considerations which would indicate that the proposal could not be supported.

After due consideration, the Local Review Body **agreed** to Uphold the Notice of Review and Reverse the Decision of the Appointed Officer and GRANT Full Planning Permission, subject to conditions which would be drafted by the Planning Adviser as required by the Environmental Health Service.

7. LRB 373 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AND DETACHED GARAGE AT LAND AT EAST TORRYLEITH, NEWMACHAR – REFERENCE: APP/2016/2534

Local Review Body: Councillors S W Pratt (Chair), P W Bellarby, R Cassie, C R McKail, C Shand and M Stewart

There had been submitted a Notice of Review and supporting documents by the applicant which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for Erection of a Dwellinghouse and Detached Garage at Land at East Torryleith, Newmachar – Reference: APP/2016/2534.

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 sent an assessment report to the agent; Contaminated Land had no objection to the proposed development as there was no indication of any past contamination; Environmental Health had no objection to the proposed development subject to comments which included the septic tank being maintained and emptied as required to minimise the likelihood of foul water leaking from the tank, and the noise level during the construction should be controlled; Roads Development had made no comment on the application as the existing arrangements were sufficient for an additional dwellinghouse and Scottish Water had not responded 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 3: Development in the Countryside, as contained in the Aberdeenshire Local Development Plan 2012 as the proposed development fails to meet the criteria set out in Supplementary Guidance Rural Development 1: Housing and Business Development in the Countryside, in that:

The applicants have failed to demonstrate that the proposed dwellinghouse is sufficiently well related to the existing building as stipulated by the above policy requirements. While the policy allows some flexibility in both the scale and position of the proposed dwelling, it is clear that it must be on the same site as the redundant building. The use of undeveloped land has not been sufficiently justified in this case.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2012) were: Policy 3: Development in the Countryside and SG Rural Development 1: 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; Policy 7: Other Special Housing Needs and SG SHN1: Development for Particular Needs and Policy 9: Developer Contributions and SG Developer Contributions 1: Developer Contributions 2: Access to New Development and SG Developer Contributions 3: Water and Waste Water Drainage Infrastructure.

The Local Review Body were then reminded that the Aberdeenshire Local Development Plan, (2012) policies had now been replaced by the policies contained within the newly adopted

Aberdeenshire Local Development Plan, 2017 and as such the Local Review Body considered that the relevant policies within the Aberdeenshire Local Development Plan (2017) were: Policy R2 – Housing and Employment Development in the Countryside; Policy P1 – Layout, Siting and Design; Policy RD1 – Providing Suitable Services and Policy RD2: Developer's 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. 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 the Local Review Body made reference to the relevant development plan policy, RD2 from the Aberdeenshire Local Development Plan, 2017 and Planning Advice 1/2016 – Housing and Business Development in the Countryside. The Local Review Body accepted that Policy R2 was similar in its wording from the now superseded Policy 3 from the Aberdeenshire Local Development Plan, 2012 which confirmed that the council would *'restrict development proposals in the countryside area outwith Aberdeen greenbelt and coastal zone to small scale development that would involve the refurbishment or replacement, on the same site, of an existing house or disused building.'*

The Local Review Body expressed some sympathy with the applicant's case (including the supporting medical information), however, the Local Review Body were unanimous in their view that they had to consider the case solely on planning merits.

The Local Review Body took the view that the red line development boundary had been drawn to suit, which had resulted in the application site covering a larger area of land which extended onto a greenfield site and which was outwith the footprint and curtilage of the former bothy building. As such they agreed that it could not reasonably be regarded as being the same site as it bore no relationship to the existing bothy building and the proposed house would be too distant from it and would not be sited within the defined curtilage of the former bothy building.

As such the principle of the development could not be supported as it would fail to comply with the qualifying criteria specified in Policy R2 of the Aberdeenshire Local Development Plan, 2017.

After due consideration, the Local Review Body **agreed** to DISMISS the Notice of Review and Uphold the Appointed Officer's Decision to Refuse Full Planning Permission as the application did not comply with the policies contained within the Aberdeenshire Local Development Plan, 2017.